(24,761)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 487.

MANUFACTURERS RAILWAY COMPANY AND ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, APPELLANTS,

vs.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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a THE UNITED STATES OF AMERICA:

To the United States of America and the Interstate Commerce Commission and John T. Barker, Attorney General of the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an order allowing an appeal, filed in the Clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein Manufacturers' Railway Company, a corporation, and St. Louis Southwestern Railway Company, a corporation, are petitioners and appellants and you are defendants and appellees, to show cause, if any there be, why the final decree rendered against the said appellants, as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Elmer B. Adams, Circuit Judge and Judge of the District Court of the United States within and for the Eastern District of Missouri, this 12th day of May in the year of our Lord one thousand nine hundred and fifteen.

ELMER B. ADAMS,
United States Circuit Judge for the Eighth Judicial Circuit, Duly Assigned to Hold Courts in the Eastern District of Missouri.

b Service of a copy of the within citation is hereby admitted this 19th day of May, A. D. 1915.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
JOS. W. FOLK,
Counsel for the Interstate Commerce Commission.

Service of a copy of the within citation is hereby admitted this 22nd day of May, A. D. 1915.

JOHN T. BARKER,
Attorney General of the State of Missouri.

[Endorsed:] No. 4384. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. Manufacturers Railway Company and St. Louis Southwestern Railway Company, Petitioners, vs. United States of America, Respondent, Interstate Commerce Commission, Intervening Petitioner. Citation. Filed May 24, 1915. W. W. Nall, Clerk.

1 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Be it remembered, that heretofore, to-wit on the 10th day of December, A. D., 1914, there was filed in the office of the Clerk of the District Court in and for the Eastern Division of the Eastern Judicial District of Missouri, a certain petition in Cause No. 4384, wherein Manufacturers' Railway Company, a corporation, and St. Louis Southwestern Railway Company, a corporation, are petitioners, and United States of America, is Respondent, which said petition is in words and figures as follows, to-wit:

(*Petition.*)

2 Equity Docket, No. 80.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

No. 4384.

MANUFACTURERS' RAILWAY COMPANY (a Corporation) and St. Louis Southwestern Railway Company (a Corporation), Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent.

Petition.

Sidney F. Andrews, of Counsel and Solicitor for Petitioner, Manufacturers' Railway Company.

Samuel H. West, Edward A. Haid, of Counsel and Solicitors for Petitioner, St. Louis Southwestern Railway Company.

3 In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

No. 4384.

MANUFACTURERS' RAILWAY COMPANY (a Corporation) and St. Louis Southwestern Railway Company (a Corporation), Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent.

Petition.

To the Honorable Judges of the District Court of the United States for the Eastern Division of the Eastern District of Missouri:

Your petitioners, Manufacturers Railway Company and St. Louis Southwestern Railway Company, bring this, their petition, against the United States of America, and thereupon complaining say:

I.

Your petitioners, Manufacturers Railway Company and St. Louis Southwestern Railway Company, are each a railroad corporation, organized and existing under and by virtue of the laws of the State of Missouri.

4 That the Manufacturers Railway Company, one of the parties upon whose complaint or petition the order of the Interstate Commerce Commissoin complained of was made, resides and has its principal office in the City of St. Louis, Missouri, within the Eastern Division of the Eastern Judicial District of Missouri, and the matter complained of therein before the Commission arose in said City of St. Louis.

II.

Petitioners are, and at all times herein referred to were, common carriers engaged in the transportation of persons and property from the States of Louisiana and Arkansas and other States to the States of Missouri, Illinois and other States, and as such are subject to, and have in all respects complied with the provisions of an Act of Congress of the United States entitled "An Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and have in all respects complied with the lawful orders, rules and regulations of the Interstate Commerce Commission.

III.

Petitioners aver that petitioner, St. Louis Southwestern Railway Company, in compliance with the provisions of the act to regulate commerce and the rules and regulations of the Interstate Commerce Commission, has at various times published and filed with the In-

terstate Commerce Commission numerous tariffs providing for rates on various commodities from and to points on its line of railway and the lines of railway of its connecting carriers to and from St. Louis; that petitioner, St. Louis Southwestern Railway Company, has no rails of its own to warehouses, factories or industries which
5 are located on the rails of petitioner, Manufacturers Railway Company, nor has it any rails of its own connecting with the rails of the Manufacturers Railway Company, but can reach such warehouses, factories and industries only over the Manufacturers Railway Company through its connecting carrier, the St. Louis Transfer Railway Company.

Petitioners aver that the Manufacturers Railway Company, in compliance with the act to regulate commerce and the rules and regulations of the Interstate Commerce Commission, on or about the 5th day of February, 1913, issued, published and filed with the Interstate Commerce Commission, effective March 17, 1913, its "St. Louis-East St. Louis Terminal Lines' Switching Tariff No. 1-F, I. C. C. No. 973," which provided for the assessment and collection by it of a switching rate of four dollars and fifty cents ($4.50) per car for its service of transporting freight to or from industries located on its line of railway, within the City of St. Louis, to or from its connection with the St. Louis Transfer Railway Company.

That on or about the 7th day of December, 1913, petitioner, St. Louis Southwestern Railway Company, published and filed with the Interstate Commerce Commission, to become effective January 7, 1914, a tariff known as Supplement No. 5 to local tariff No. 6188 of St. Louis Southwestern Railway Company, I. C. C. No. 3219, which, amongst other things, provided that on all carload traffic originating at competitive points on its line of railway or on the line of railway of its connections and transported over its line of railway destined to warehouses, factories or industries located on the line of railway of the Manufacturers Railway Company, within the City of St. Louis, and on all competitive traffic originating at warehouses,
6 factories or industries located on the line of railway of the Manufacturers' Railway Company and destined to points located on the line of railway of the St. Louis Southwestern Railway Company, or its connections, and transported over the line of railway of St. Louis Southwestern Railway Company, the St. Louis Southwestern Railway Company would pay the charges of the Manufacturers Railway Company for switching said traffic to or from the connection of the St. Louis Transfer Railway Company with the Manufacturers Railway Company from or to the warehouses, factories or industries located on the line of railway of the Manufacturers Railway Company.

IV.

Petitioners aver that in pursuance of authority conferred upon it by law the Interstate Commerce Commission, on or about the 19th day of December, 1913, entered and caused to be served upon petitioner, St. Louis Southwestern Railway Company, an order, in words and figures as follows, to-wit:

"At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 19th Day of December, A. D. 1913.

Investigation and Suspension Docket No. 355.

Absorption of Switching Charges at St. Louis, Mo.

"It appearing that there has been filed with the Interstate Commerce Commission by the Chicago, Peoria & St. Louis Railroad Company and the St. Louis Southwestern Railway Company, tariffs containing schedules stating new individual regulations and practices affecting rates and charges, to become effective the 7th day of January, 1914, designated as follows:

7

Chicago, Peoria & St. Louis Railroad Co. Supplement No. 2 to I. C. C. No. 953.

St. Louis Southwestern Railway Co. Supplement No. 5 to I. C. C. No. 3219.

It Is Ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the changes and the lawfulness of the regulations and practices stated in the schedules contained in said tariffs.

It Further Appearing, That said schedules make certain changes in rates for the interstate transportation of various commodities, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the schedules contained in said tariffs should be postponed pending said hearing and decision thereon:

It Is Further Ordered, That the operation of all schedules contained in said tariffs be suspended, and that the use of the regulations and practices therein stated be deferred upon interstate traffic until the 7th day of May, A. D. 1914, unless otherwise ordered by the Commission.

And It Is Further Ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the following carriers, viz: Chicago, Peoria & St. Louis Railroad Company, St. Louis Southwestern Railway Company, and that said carriers be, and they are hereby, made respondents to this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

8

By the Commission.

(Signed) GEORGE B. McGINTY, *Secretary.*"

V.

On or about the 20th day of April, 1914, the Interstate Commerce Commission entered, issued and served upon petitioner, St. Louis Southwestern Railway Company, an order, in words and figures as follows, towit:

"At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 20th Day of April, A. D. 1914.

Investigation and Suspension Docket No. 355.

Absorption of Switching Charges at St. Louis, Mo.

It Appearing, That by an order dated the 19th day of December, 1913, the Interstate Commerce Commission entered upon a hearing concerning the propriety of the new individual regulations and practices affecting rates and charges, stated in the schedules contained in tariffs, designated as follows:

Chicago, Peoria & St. Louis Railroad Co. Supplement No. 2 to I. C. C. No. 953.

9 St. Louis Southwestern Railway Co. Supplement No. 5 to I. C. C. No. 3219.

It Further Appearing, That pending such hearing and decision the Commission ordered that the operation of the schedules contained in said tariffs be suspended, and that the use of the regulations and practices, therein stated, be deferred upon interstate traffic until the 7th day of May, 1914, and,

It Further Appearing, That such hearing cannot be concluded within the period of suspension above stated,

It Is Ordered, That the operation of the schedules contained in the tariffs above designated, be further suspended, and that the use of the regulations and practices therein stated be further deferred upon interstate traffic until the 7th day of November, 1914, unless otherwise ordered by the Commission.

It Is Further Ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission and that copies hereof be forthwith served upon the respondents to this proceeding.

By the Commission.

(Signed) GEORGE B. McGINTY, *Secretary.*"

VI.

That under date of July 10, 1914, the Interstate Commerce Commission entered and subsequently caused to be served upon petitioner, St. Louis Southwestern Railway Company, an order, in words and figures as follows, to-wit:

10 Investigation and Suspension Docket No. 355.

Absorption of Switching Charges at St. Louis, Mo.

It Appearing, That on December 19, 1913, the Commission entered upon an investigation concerning the lawfulness and propriety of the rates, charges, regulations and practices stated in the schedules designated as follows:

Chicago, Peoria & St. Louis Railroad Co. Supplement No. 2 to I. C. C. No. 953,

St. Louis Southwestern Railway Co. Supplement No. 5 to I. C. C. No. 3219,

and subsequently ordered that the operation of said schedules contained in said tariffs be suspended until November 7, 1914;

It Further Appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It Is Ordered, That the carriers respondent herein and designated in said tariffs be, and they are hereby notified and required to cancel, on or before November 7, 1914, the rates, charges, regulations and practices stated in the schedules specified in said orders of suspension.

By the Commission.

(Signed) GEORGE B. McGINTY, *Secretary.*"

VII.

Your petitioners further aver that it appears on the face of said last mentioned order that the Interstate Commerce Commission, in support thereof, referred to a certain report of even date
11 therewith, containing its findings of fact and conclusions thereon, and states that the said report referred to is made a part thereof. Your petitioners assume that the report and findings of fact and conclusion thereon thus referred to, are the several reports or decisions of said Commission made in the case of Manufacturers' Railway Company v. St. Louis, Iron Mountain & Southern Railway Company et al., I. C. C. Docket No. 3151 (inasmuch as the order of the Commission in Investigation and Suspension Docket No. 355 and the opinion and order of the Commission in case No. 3151 above referred to are published and distributed by the Interstate Commerce Commission in a single pamphlet) in which event your petitioners respectfully aver that the several findings set out in the said various reports or decisions rendered by said Commission in said cause No. 3151, do not warrant said order made in Investigation and Suspension Docket No. 355 herein referred to.

VIII.

Your petitioners further aver that said order of date July 10, 1914, is unlawful and void because:

(1) The Interstate Commerce Commission was without power or authority in law to make said order unless it first found that the payment of the division of $4.50 per car by St. Louis Southwestern Railway Company to the Manufacturers' Railway Company was so excessive and unreasonable as to constitute a rebate to or discrimination in favor of the owners of the Manufacturers' Railway.

(2) That the Commission has made no finding that said division

was so excessive or unreasonable as to constitute a rebate to
12 or discrimination in favor of the owners of the Manufacturers' Railway.

(3) There is no evidence in the record of any of the above mentioned proceedings before the Interstate Commerce Commission to support a finding that the payment of said division by St. Louis Southwestern Railway Company to the Manufacturers' Railway Company was so excessive or unreasonable as to constitute a rebate to or discrimination in favor of the owners of the Manufacturers' Railway.

(4) The said order of the Commission prohibits the St. Louis Southwestern Railway Company from paying to the Manufacturers' Railway Company for its services aforesaid as great a sum as $4.50 per car and thereby impliedly commands that the divisions to be paid it shall be less than $4.50 per car, on the ground that the Commission is of opinion that $2.50 per car would be reasonable compensation for said service. Petitioners aver that a division of less than $4.50 per car is not, and will not be, sufficient to pay the cost of transportation performed by said Manufacturers' Railway Company and yield it a just and fair return upon the value of the property used by it in said transportation, and therefore exceeds the power of the Commission and deprives petitioner, the Manufacturers' Railway Company, of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(5) The said order is so arbitrary and unreasonable in its character as to transcend the limits of regulation and to be in effect a denial of due process of law or a deprivation of the equal protection of the laws.

13 (6) The Commission, by its said order, attempts to establish the divisions to accrue to the respective carriers out of a joint through rate which has not been established by the Commission, and its order is therefore without lawful authority and null and void.

(7) The Commission, by its order of date April 20, 1914, attempted to suspend the tariff of petitioner, St. Louis Southwestern Railway Company, hereinbefore referred to, beyond a period of one hundred and twenty days from the date said tariff would otherwise have become effective without having, within said period of one hundred and twenty days, as provided by Section 15 of the Act to Regulate Commerce, afforded petitioner, St. Louis Southwestern Railway Company, a full hearing as required thereby concerning the propriety of the rates, fares, charges, classifications, regulations or practices therein contained, and without having commenced or afforded petitioner, St. Louis Southwestern Railway Company, any hearing whatsoever with reference thereto, and therefore the Commission was without any lawful authority to make said order of suspension, of date April 20, 1914, or said order of date July 10, 1914, requiring said St. Louis Southwestern Railway Company to cancel said tariff hereinbefore referred to.

IX.

Petitioners further aver that the amount involved in this controversy exceeds, exclusive of interest and costs, the value and sum of $3,000.00.

14

X.

Wherefore, petitioners pray that due service of this petition be made on respondent herein, commanding it to answer the matter thereof (but not under oath, answer under oath being expressly waived); that copies of the application for injunction hereby made be duly served on the respondent, on the Attorney-General of the United States, and on the Interstate Commerce Commission; that a decree be entered herein setting aside and annulling the said orders of the Interstate Commerce Commission, of date April 20 and July 10, 1914, respectively, and perpetually enjoining the defendant, the United States of America, its agents, servants and representatives, from enforcing said orders, or either of them, and from taking any steps or instituting any proceedings for the enforcement of the same; and that a decree be entered herein that the suspension of said tariff of petitioner, St. Louis Southwestern Railway Company, from and after May 7, 1914, was and has been null and void and of no effect and that said tariff has been from May 7, 1914, lawfully effective; and for the further protection of its rights petitioners pray that a provisional or temporary injunction or restraining order be issued suspending the said orders of the Interstate Commerce Commission and restraining the defendant, its agents, servants and representatives from enforcing the same and from taking any steps or instituting any proceedings for the enforcement thereof, until the final determination of this cause. That petitioners may have such other and further relief in the premises, including final and interlocutory writs and decrees, as the nature of the case shall
15 require and to your Honors shall seem meet. And petitioners will ever pray, etc.

MANUFACTURERS' RAILWAY COMPANY,
By G. F. MOORE, *President.*

SIDNEY F. ANDREWS,
Of Counsel and Solicitor for Petitioner, Manufacturers' Railway Company.

ST. LOUIS SOUTHWESTERN RAILWAY
By J. D. WATSON, *Ass't Fr't Tr'f M'g'r.*

SAMUEL H. WEST,
EDWARD A. HAID,
Of Counsel and Solicitors for Petitioner, St. Louis Southwestern Railway Company.

16 STATE OF MISSOURI,
City of St. Louis, ss.:

G. F. Moore, being first duly sworn, on oath states that he is President of the Manufacturers' Railway Company, complainant in the above-entitled cause. Affiant further states that he has read the foregoing bill of complaint and that the allegations therein contained are true, except where made upon information and belief, and when so made affiant states that he believes them to be true.

G. F. MOORE.

Sworn to and subscribed before me this 9th day of December, A. D. 1914. My commission expires on the 19th day of April, 1918.

[SEAL.] ESTHER WILSON,
Notary Public.

STATE OF MISSOURI,
City of St. Louis, ss:

J. D. Watson, being first duly sworn, on oath states that he is Ass't Fr't Traffic M'g'r of the St. Louis Southwestern Railway Company, complainant in the above-entitled cause. Affiant further states that he has read the foregoing bill of complaint and that the allegations therein contained are true, except where made upon information and belief, and when so made affiant states that he believes them to be true.

J. D. WATSON.

Sworn to and subscribed before me this 9th day of December, A D. 1914. My commission expires on the 6th day of May, 1917.

[SEAL.] JAMES B. WALSH,
Notary Public, City of St. Louis, Mo.

17 The Clerk is requested to issue subpœna returnable in 30 days and forward same for service (with copies of petition) by Marshal at Washington on Interstate Commerce Commission and on Att'y General.

SIDNEY F. ANDREWS AND
EDW. A. HAID,
Sol'rs for Petitioners.

Dec. 10, 1914.

18 And afterwards, to-wit on the 21st day of January, 1915, there was filed in said cause, the Answer of the United States, in words and figures, as follows, to-wit:

(*Answer of the United States.*)

19 In Equity. No. 4384.

In the District Court of the United States, Eastern District of Missouri, Eastern Division.

MANUFACTURERS' RAILWAY COMPANY (a Corporation) and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY (a Corporation), Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Answer of the United States.

20 In the District Court of the United States, Eastern District of Missouri, Eastern Division.

In Equity. No. 4384.

MANUFACTURERS' RAILWAY COMPANY (a Corporation) and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY (a Corporation), Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Answer of the United States.

United States, for answer to the petition filed herein against it, says:

I. It admits the matters and things alleged in Paragraph I, in manner and form as alleged.

II. It admits the matters and things alleged in Paragraph II, in manner and form as alleged, with this exception: It denies that Manufacturers' Railway Company is a common carrier to the extent alleged, and alleges that the extent to which Manufacturers' Railway Company is a common carrier is fully defined by the Interstate Commerce Commission in its said three reports, to which reference is here made for greater certainty.

III. It has no knowledge of the matters and things alleged in Paragraph III, in manner and form as alleged, and it neither
21 admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

IV, V, VI. It admits the Commission made and entered the three orders referred to in I. & S. Docket No. 355.

VII. It admits that the Commission, in said order of July 10, 1914, referred to a certain report of even date therewith, containing its findings of fact and conclusion thereon, and that the said report referred to was made a part of the said order. It admits that the

report and findings of fact and conclusion thereon thus referred to are the several reports or decisions of said Commission made in Manufacturers' Railway Company et al. v. St. Louis, Iron Mountain & Southern Railway Company et al., I. C. C. Docket No. 3151. It denies that the several findings set out in the said various reports or decisions rendered by the Commission in said cause No. 3151 do not warrant the order made in I. & S. Docket No. 355.

VIII. It denies that the order of July 10, 1914, of the Interstate Commerce Commission is unlawful and void for the reasons stated, or for any of them.

(1) It denies the matters and things alleged in part (1) of Paragraph VIII, and each and every part of the same, in manner and form as alleged.

(2) It denies the matters and things alleged in part (2) of Paragraph VIII, and each and every part of the same, in manner and form as alleged.

22 (3) It denies the matters and things alleged in part (3) of Paragraph VIII, and each and every part of the same, in manner and form as alleged.

(4) It denies the matters and things alleged in part (4) of Paragraph VIII, and each and every part of the same, in manner and form as alleged, with this exception: It admits that said order prohibits St. Louis Southwestern Railway Company from paying to Manufacturers' Railway Company as great a sum as $4.50 per car.

(5) It denies the matters and things alleged in part (5) of Paragraph VIII, and each and every part of the same, in manner and form as alleged.

(6) It denies the matters and things alleged in part (6) of Paragraph VIII, and each and every part of the same, in manner and form as alleged.

(7) It denies the matters and things alleged in part (7) of Paragraph VIII, and each and every part of the same, in manner and form as alleged.

Defendant alleges that the matters and things alleged in the petition and sought to be put in issue were all before the Interstate Commerce Commission in the various hearings had before it in No. 3151, to which the petitioners were parties, and were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the act to regulate commerce. In its reports in writing with respect thereto, made after full hearings on due notice to all of the parties, which state its conclusion together with its decision, order, or requirement in the premises, the

23 matters and things of which complaint is now made were fully considered and foreclosed by findings of fact, based on substantial evidence adduced on the issues made by the parties.

Further answering the said petition, and each and every part of the same, in so far as it has not heretofore been admitted, denied, or otherwise traversed, defendant denies—

(*a*) Any fact or facts alleged in said petition, or any part of the same, which deny, or which seek to deny, any fact or facts found by the Interstate Commerce Commission in its said reports and order.

(*b*) Any fact or facts alleged in said petition, or any part of the same, which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order.

(*c*) Any and all inferences of fact from any particular fact or facts alleged in the said petition, or any part of the same, which seek to deny, or which are inconsistent with, any fact or facts found by the Interstate Commerce Commission in its said reports and order.

(*d*) Any fact or facts alleged in said petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Interstate Commerce Commission.

(*e*) Any fact or facts alleged in said petition, or any part of the same, which attack, or which seek to attack, the reports and
24 order of the Interstate Commerce Commission, and to show facts contrary to what the said reports and order show on the face thereof.

(*f*) Any allegations in said petition, or any part of the same, which allege that facts were found by the Interstate Commerce Commission in its said reports and order which, as shown on the face thereof, in fact were not so found.

(*g*) Any conclusions of law alleged and insisted upon in the said petition, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission in its said reports and order.

Respondent gives notice that upon the final hearing hereof, or upon any preliminary hearing hereof, and in accordance with section 1 of the act entitled "An act to create a Commerce Court," etc., approved June 18, 1910, it will move to dismiss the petition, for that the same is insufficient to state any cause of action.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
ARTHUR L. OLIVER,
United States Attorney, Eastern District of Missouri, Eastern Division.

25 And afterwards, to-wit on the 10th day of February, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(*Order.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS' RAILWAY COMPANY, a Corporation, et al., Complainants,
vs.
UNITED STATES OF AMERICA, Defendant.

On application of said complainant- by solicitor, and it appearing to the Court that this cause is at issue, and that an exceptional condition exists requiring the appointment of an examiner to take testimony in this cause, it is now

Ordered that Byron F. Babbitt, Esq., of St. Louis, Missouri, be and he is hereby appointed as a Special Examiner to take such proofs as may be offered on behalf of either party to this cause, and that he be and is hereby invested with all the powers conferred upon examiners conformably to the rules and practice in equity; and the said Examiner is directed to proceed with the taking of such proofs not later than February 15th, 1915, and that a copy of this order be served on Counsel for Complainants, and on the United States Attorney for the Eastern District of Missouri, for the Defendant.

(Signed) ELMER B. ADAMS,
Circuit Judge.

I hereby acknowledge receipt of a copy of the above and foregoing order, Feb. 10, 1915.

ARTHUR L. OLIVER.

We hereby acknowledge receipt of a copy of above and foregoing order, Feb. 11, 1915.

NAGEL & KIRBY,
By H. C. FAIR.

26 And afterwards, to-wit, on the 15th day of February, 1915, there was filed in said cause, Answer of the Interstate Commerce Commission, in words and figures, as follows, to-wit:

(*Answer of Interstate Commerce Commission.*)

27 In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4384.

MANUFACTURERS RAILWAY COMPANY, a Corporation, and ST. LOUIS SOUTHWESTERN RAILWAY CO., a Corporation, Petitioners,
v.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of the Interstate Commerce Commission.

Joseph W. Folk, Charles W. Needham, Edward W. Hines, Counsel.

28 In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4384.

MANUFACTURERS RAILWAY COMPANY, a Corporation, and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation, Petitioners,
v.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of the Interstate Commerce Commission.

The Interstate Commerce Commission having entered its appearance in the above-entitled cause as a respondent, now and at all times saving to itself all benefit and advantage of exceptions to the petition herein for answer thereunto or to so much or such parts thereof as this respondent is advised it is material to make answer, answering, says:

I.

It admits that the petitioners, Manufacturers Railway Co. and St. Louis Southwestern Railway Co., are railroad corporations organized and existing under and by virtue of the laws of the State of
29 Missouri, and that the Manufacturers Railway Co. has its principal office in the city of St. Louis, Mo., within the Eastern Division of the Eastern District of Missouri, and that this court has jurisdiction of the parties and subject matter of this ligitation.

II.

This respondent admits that the St. Louis Southwestern Railway Co. is a common carrier engaged in the transportation of persons and

property from the States of Louisiana and Arkansas and other States to the States of Missouri and Illinois and other States, and as such is subject to the act to regulate commerce.

This respondent further states, as appears from its several reports hereinafter referred to, that the Manufacturers Railway Co. is a switching railroad with about 2¼ miles of main track and about 22½ miles of branches and sidings in the city of St. Louis, Mo.; that its largest shipper is the Anheuser-Busch Brewing Association and that a majority of the stock of the brewing association is owned by the owners of a majority of the stock of the Manufacturers Railway Co.; that approximately 85 per cent of the business done by said Manufacturers Railway Co., with the exception of its Second Street line, is furnished by the Anheuser-Busch Brewing Association, and that about 75 per cent of the total business of said Manufacturers Railway Co., including traffic to and from its Second Street line, is handled for the Anheuser-Busch Brewing Association; that these figures are based upon the first eight months of 1912;
30 that the Manufacturers Railway Co. has four engines but no cars of its own, the cars used for traffic which it originates being refrigerator cars furnished principally by the St. Louis Refrigerator Car Co.; that a substantial portion of the stock of said St. Louis Refrigerator Car Co. is owned by the owners of stock in the Anheuser-Busch Brewing Association; that the Manufacturers Railway Co. does not handle less-than-carload freight and has no passenger traffic; that for a number of years following the inception of the business of the brewing association the inbound raw materials and outbound products were drawn by horses and wagons from and to the tracks of the trunk lines; that in 1885 the horse and wagon was abandoned upon completion of a railway operated by steam between the brewery plant and the tracks of the trunk lines; that said railway is that of the Manufacturers Railway Co., petitioner herein.

This respondent states that while the Manufacturers Railway Co. is a common carrier, as set forth in the several reports of this respondent, copies of which are hereto attached and marked "Exhibits A, B, and C," and made parts hereof, the divisions of the through rate or allowances made by trunk lines to the Manufacturers Railway Co. might be so excessive as to amount to a rebate to the owners of the Anheuser-Busch Brewing Association, by reason of the common ownership of stock of the Manufacturers Railway Co. and the brewing association in the manner above set out.

31 III.

This respondent admits that the St. Louis Southwestern Railway Co. has no rails of its own to warehouses, factories, or industries which are located on the rails of the Manufacturers Railway Co., but reaches such warehouses, factories, and industries over the Manufacturers Railway through the St. Louis Transfer Railway Co. This respondent further states that the Manufacturers Railway Co., on or about the 4th day of March, 1910, filed a petition with this respondent, Interstate Commerce Commission, to which petition the St.

Louis Southwestern Railway Co. and a number of other common carriers were made parties defendant. In said petition the Manufacturers Railway Co. sought to have this respondent order said St. Louis Southwestern Railway Co. and the other common carriers named to make allowances to said Manufacturers Railway Co. approximating $4.50 per car on traffic from and to points along the line of the Manufacturers Railway Co. Said petition also sought to have this respondent order said St. Louis Southwestern Railway Co. and other carriers to establish through routes and through or joint rates from and to points along the line of the Manufacturers Railway Co. at the St. Louis rate, and this respondent was in said petition asked to order said St. Louis Southwestern Railway Co. and other carriers to pay said Manufacturers Railway Co. out of such rate $4.50 per car. Said petition also alleged that said St. Louis Southwestern Railway Co. and the other trunk line defend-
32 ants were discriminating against said Manufacturers Railway Co. by absorbing the charges of the Terminal Railroad Association of St. Louis, hereinafter referred to as the Terminal Association, while refusing contemporaneously to absorb the charges of the Manufacturers Railway Co. This proceeding brought by the Manufacturers Railway Co. against the St. Louis Southwestern Railway Co. and the other trunk lines was and is known as Docket No. 3151. Upon the filing of this petition and its service upon the St. Louis Southwestern Railway Co. and other carriers defendants therein, this respondent, Interstate Commerce Commission, proceeded to investigate the complaint of said petitioner, and a large amount of testimony was taken.

This respondent further states that on the 21st day of June, 1911, this respondent made its report, finding that the Manufacturers Railway Co. was a common carrier and that it and its shippers were being discriminated against by the trunk lines because the latter refused to absorb the railway's charge, but contemporaneously absorbed the charge of the Terminal Association, the stock of which association was owned by said trunk lines. This respondent, however, made no order in the case, and upon motion for rehearing and reargument made by said St. Louis Southwestern Railway Co. and other trunk lines, the same was granted and further testimony was taken, and this respondent having considered the matter
33 further, on the 21st day of June, 1913, made its second report, modifying its former finding of undue discrimination, because upon reconsideration this respondent was of the opinion that there was substantial dissimilarity of conditions shown between traffic to and from delivery points on the Terminal Association and traffic to and from delivery points on the Manufacturers Railway Co., in that the Terminal Association's rails and facilities, consisting of river ferry and connecting belt lines reaching the river, were essential to the trunk lines coming into St. Louis from the east, whereas the Manufacturers Railway Co. was wholly within the city of St. Louis and its facilities were not necessary to reach the city of St.

Louis, and did not come into play until the freight was within the city of St. Louis.

Respondent further states that in this report, a copy of which is hereto attached as Exhibit B and made a part hereof, respondent found that the discrimination alleged by the Manufacturers Railway Co. in favor of the Terminal Association was not proved by the evidence, and that an allowance of $4.50 per car to said Manufacturers Railway Co. would be so excessive as to produce unlawful results in view of the common ownership of the stock of the Manufacturers Railway Co. and the Anheuser-Busch Brewing Association as aforesaid.

The respondent further states that in this its second report it made no order, but stated that if joint rates were established $2 per car would seem, in its opinion, to be a reasonable division, which
34 amount was specifically stated in the report as being merely an expression of opinion and not a definite finding subject to change by definite finding upon further hearing, if the necessity for such further hearing should later arise.

Further answering, respondent states that the Manufacturers Railway Co., the Anheuser-Busch Brewing Association, and other shippers filed with this respondent motion for a reargument of said cause, which motion was granted by this respondent, and on November 13, 1913, said cause was reargued before this respondent and taken under advisement for further consideration.

This respondent further states that while the complaint or petition of the Manufacturers Railway Co. against the St. Louis Southwestern Railway Co. and other carriers, in docket No. 3151, was thus being considered by it, and while the matter was pending before this respondent and undetermined, said St. Louis Southwestern Railway Co., on the 7th day of December, 1913, filed with the Interstate Commerce Commission, to become effective January 7, 1914, the tariff known as Supplement No. 5 to local tariff No. 6188 of the St. Louis Southwestern Railway Co., whereby said railway company proposed to make an allowance of $4.50 per car to the said Manufacturers Railway Co. on all competitive carload traffic originating on the line of the St. Louis Southwestern Railway Co. or its
35 connections and transported over its line of railway, destined to warehouses, factories, or industries located on the line of railway of the Manufacturers Railway Co. within the city of St. Louis.

IV.

That under and by virtue of the authority conferred upon it by the act to regulate commerce, this respondent suspended said tariff.

Respondent further states that the said St. Louis Southwestern Railway Co. was a party to the proceedings under petition theretofore filed by the Manufacturers Railway Co. against said St. Louis Southwestern Railway Co. and other carriers as aforesaid, and that said proceeding involved the determination of what should be the rates, allowances, or divisions of the trunk lines to the Manufacturers Railway Co., and that said St. Louis Southwestern Railway Co., in

filing said tariff proposing the allowance to said Manufacturers Railway Co. of $4.50 per car, was attempting to prejudice said cause pending before this respondent, and to decide for itself the question involved in advance of a finding by this respondent in the pending and undetermined case of the Manufacturers Railway Co. against the St. Louis Southwestern Railway Co. and other carriers.

Respondent states that the order of this respondent suspending said tariff so filed by said St. Louis Southwestern Railway Co. is known as I. & S. Docket No. 355, which is in fact and effect a part of the Docket No. 3151, involving the allowances or divisions
36 to be made by the trunk lines to the said Manufacturers Railway Co. on shipments to and from industries along the line of said Manufacturers Railway Co.

This respondent further states that said cause, Docket No. 3151, in which said Manufacturers Railway Co. was complainant and said St. Louis Southwestern Railway Co. was one of the defendants, was fully considered by this respondent upon reargument granted upon request of the Manufacturers Railway and the other complainants in Docket 3151, and that this respondent made its report and rendered its decision (Exhibit C, dated July 10, 1914, filed November 5, 1914), in which this respondent held that while it could not require the trunk lines to participate with the Manufacturers Railway Co. in joint rates which would not be higher than the St. Louis rates, the Manufacturers Railway Co. and the trunk lines might voluntarily participate in joint rates on that basis, provided that in the final division of the joint rate or through charge received from the shippers the trunk lines did not pay the Manufacturers Railway Co. for its service more than was just and reasonable, and did not by an excessive division indirectly refund to the owners of the Anheuser-Busch Brewing Association a part of the through transportation charge paid to the trunk lines by said brewing association. This respondent stated in its supplemental report that in its opinion an allowance of $4.50 per car to the Manufacturers Railway Co. would be excessive and effect unlawful results. This respondent
37 further states that it made an order in said cause, Docket No. 3151, whereby the trunk lines and the Manufacturers Railway Co. are required to put in force joint rates in interstate commerce which shall not exceed the St. Louis rates by more than $2.50 per car.

This respondent states that said order in Docket No. 3151, which is attached hereto as Exhibit C and made a part of this answer, was and is valid and binding upon the St. Louis Southwestern Railway Co. and the Manufacturers Railway Co.; that said order was made by this respondent after full hearing granted to all of the parties in said cause, including the petitioners, and that there was no irregularity in the proceedings before this respondent prior to the entry of said order in docket No. 3151 aforesaid, and that said order is concerning matters within the jurisdiction of this respondent under the act to regulate commerce and does not violate any constitutional rights of the petitioners.

This respondent further states that said St. Louis Southwestern

Railway Co. being a party to the proceeding brought by the Manufacturers Railway Co. against said St. Louis Southwestern Railway Co. and other carriers, in docket No. 3151 as aforesaid, and this respondent in said proceeding having found and ordered that the joint rates to points along the line of said Manufacturers Railway Co. should not exceed the St. Louis rate by more than $2.50 per car;

38 said St. Louis Southwestern Railway Co. and said Manufacturers Railway Co. were and are both bound by such order and finding as aforesaid in docket No. 3151, and that the finding and order in No. 3151, being based upon substantial evidence, are conclusive upon the St. Louis Southwestern Railway Co. and said Manufacturers Railway Co. and operate to render unlawful and ineffective the filing of said tariff by said St. Louis Southwestern Railway Co. whereby said St. Louis Southwestern Railway Co. proposed to allow the Manufacturers Railway Co. $4.50 per car, in the manner and form as above set out.

Respondent further states that, as appears by its second report, said payments to the Manufacturers Railway Co. were allowances out of the trunk lines' rates and were not divisions of joint rates, to which the Manufacturers Railway Co. was a party by proper tariff concurrences as provided by the act to regulate commerce and the respondent's tariff regulations based thereon.

Respondent further states that, having made its order in Docket No. 3151, establishing joint rates not to exceed the St. Louis rate by more than $2.50 per car to which the Manufacturers Railway Co. was and is a party, any amounts received by said Manufacturers Railway Co. from the trunk lines must be in the form of divisions, and that after the making of said order any allowances by the trunk lines to said Manufacturers Railway Co. became and are unlawful.

This respondent further states that the tariff of the said St.

39 Louis Southwestern Railway Co. proposing to make an allowance of $4.50 per car to the Manufacturers Railway Co. which was suspended by the order of this respondent in I. and S. Docket No. 355, is in its effect contrary to and directly opposed to the findings and order of this respondent in Docket No. 3151 above set out and is therefore unlawful.

This respondent further states that it has made no finding as to what the division of the joint rates prescribed by respondent in Docket No. 3151 should be, and that the Manufacturers Railway Co. and the trunk lines are under the findings and order in Docket No. 3151 left free to agree upon such divisions as may be proper, subject only to the qualification that said divisions must be just and reasonable and not amount to an undue discrimination the equivalent of a rebate to the Anheuser-Busch Brewing Association or its owners.

This respondent further states that it is beyond the competence of this court, in advance of a finding on the subject by this respondent, to pass upon what would be a reasonable division to the Manufacturers Railway Co., and that in the event of the Manufacturers Railway Co. and the trunk lines subsequently to the going into effect of the order in docket No. 3151 disagree as to what the division should be this respondent has primary exclusive jurisdiction in the

premises, and that if said carriers agree upon the amount of the divisions this respondent, nevertheless, still has jurisdiction, under other sections of the act than that dealing specifically with
40 divisions, to determine whether the divisions so allowed conceal a rebate or effect unlawful results.

Respondent further states that in view of the order entered in docket No 3151 establishing joint rates, there can be no allowances lawfully made to the Manufacturers Railway Co., and that any payments to said Manufacturers Railway Co. by the trunk lines must be divisions of the joint rate established in docket No. 3151 in order to be lawful.

This respondent further states that it has made no order compelling the trunk lines to absorb the charges of the Terminal Association, and further states that under its order in Docket No. 3151 the trunk lines are at liberty to file tariffs at the St. Louis rate to points along the line of the Manufacturers Railway Co., and this respondent states that all of the trunk lines entering the city of St. Louis, with the exception of the St. Louis Southwestern Railway and the Louisville & Nashville Railroad, have filed tariffs under said order applying the St. Louis rates on traffic moving in through transportation between points on the lines of the said Manufacturers Railway Co., and points on the lines of the trunk lines in States other than Missouri. This respondent also states that said Manufacturers Railway Co. has issued concurrences in said basis of rates.

This respondent further states that under an ordinance of the city of St. Louis, No. 22025, said Manufacturers Railway Co. is prohibited from charging more than $2 per car for switching its
41 local traffic within the city of St. Louis. Respondent again states that it has not yet determined what division of the joint rates established by it in Docket No. 3151 said Manufacturers Railway Co. should receive, but that on the contrary, respondent has expressly reserved the matter of divisions for further consideration, and respondent further states that until respondent has acted thereon this court has no jurisdiction over said question of divisions.

V.

This respondent states that after full investigation and hearing in docket No. 3151, it found that the payment of $4.50 per car by the St. Louis Southwestern Railway Co. to the Manufacturers Railway Co. would, because of the excessiveness of that amount, effect unlawful results, as constituting a discrimination or rebate in favor of the common owners of the Manufacturers Railway Co. and the Anheuser-Busch Brewing Association. This respondent denies that there was no finding to the effect that such allowance of $4.50 per car was so excessive and unreasonable as to be unlawful, but on the contrary this respondent found and so reported that said allowance would effect unlawful results as above stated. This respondent refers to its several reports hereto attached as exhibits for its findings in this respect, and refers particularly to the following pages of the record of testimony before this respondent (beginning with the sec-

ond hearing, January 15, 1912), to wit: 15—58; 71—450;
42 654—697; 712—726; 728—802; 892—898; 953—955; 1023—1032; 1044—1122; 1123—1266; 1440—1501. The testimony found in the foregoing pages affords abundant evidence to support the finding as aforesaid. This respondent states, however, that its findings as aforesaid with respect to the unlawfulness of this payment of $4.50 per car were in reference to allowances to said Manufacturers Railway Co., as allowances they were, and that the matter of divisions as distinguished from allowances was not passed upon by this respondent, but on the contrary was expressly deferred for further consideration if the necessity for such further consideration should later arise. This respondent denies the statement in the petition that there was no evidence in the record before this respondent to support the finding made, that the payment of the allowance of $4.50 per car by the St. Louis Southwestern Railway Co. to the Manufacturers Railway Co. was excessive and unlawful, and this respondent refers to its reports above mentioned and to the pages of the record of the testimony above referred to as showing that there was abundant evidence before this defendant for the aforesaid finding.

This respondent again states that it made no finding with respect to divisions between the St. Louis Southwestern Railway Co., and the Manufacturers Railway Co., as alleged in said petition, but on the contrary expressly reserved for future determination the question of divisions if the necessity for such further consideration should
43 later arise; that said reservation of the question of divisions was and is in strict accord with the provisions of the act to regulate commerce as contained in section 15.

VI.

This respondent further states that its findings and order in Docket No. 3151 were concerning joint rates between the trunk lines and the Manufacturers Railway Co.; that such order was to the effect that the joint interstate rate of the trunk lines and the Manufacturers Railway Co. between industries located along the line of the Manufacturers Railway Co. and interstate points should not exceed the St. Louis rate by more than $2.50 per car, and that the question of the division of that rate between the Manufacturers Railway Co. and the trunk lines was not touched upon by said order in any way, nor was the question of allowances which the Commission ordered canceled as effecting unlawful results touched upon in any way in connection with the establishment of said joint through rates under section 15 of the act or with divisions of that rate under the same section.

Respondent further states that what respondent did and all that respondent did by its order entered in Docket No. 3151 was to require establishment and maintenance of maximum joint rates between the Manufacturers Railway Co. and the trunk lines, as in the act to regulate commerce provided, leaving said Manufacturers Railway Co. and the trunk lines to establish the joint rates on the
44 lower St. Louis basis if they desired, and leaving them also to divide that rate among themselves as they see fit, pro-

vided only that in view of the common ownership of a majority of the stock of the Manufacturers Railway Co. and the Anheuser-Busch Brewing Association the division of the rate accruing to the Manufacturers Railway Co. shall be not more than is just and reasonable.

VII.

This respondent admits that in its order of July 10, 1914, it referred to a certain report of even date therewith, containing its findings of fact and conclusions thereon, and that the said report referred to was made a part of the said order. It admits that the report of the findings of fact and conclusions thereon thus referred to are the several reports or decisions of this respondent made in Manufacturers Ry. Co. et al. v. St. Louis, Iron Mountain & Southern Ry. Co. et al., I. C. C. Docket No. 3151. This respondent denies that the several findings set forth in the said various reports and decisions rendered by this defendant in said cause, Docket No. 3151 and I. and S. Docket No. 355, do not warrant the order made in I. and S. Docket No. 355.

VIII.

(1) This respondent denies that the order of July 10, 1914, is unlawful and void for the reasons stated or for any of them. This respondent denies the matters and things alleged in part 1
45 of Paragraph VIII, and each and every part of the same in manner and form as alleged, and this respondent further states that it made no finding with respect to the divisions between the St. Louis Southwestern Railway Co. and the Manufacturers Railway Co., as alleged in said petition, but on the contrary expressly reserved determination of the question of divisions for further consideration if the necessity for such consideration should later arise.

(2) This respondent denies the matters and things alleged in part 2 of Paragraph VIII, and each and every part of the same in manner and form as alleged, and this respondent further states that it made no finding with respect to the divisions between the St. Louis Southwestern Railway Co. and the Manufacturers Railway Co., as alleged in said petition, but reserved determination of the question of divisions for further consideration if the necessity for such consideration should later arise.

(3) This respondent denies the matters and things alleged in part 3 of Paragraph VIII, and each and every part of the same in manner and form as alleged, and this respondent further states that it made no finding with respect to the divisions between the St. Louis Southwestern Railway Co. and the Manufacturers Railway Co. as alleged in said petition, but reserved determination of the question of divisions for further consideration if the necessity for such consideration should later arise.

(4) This respondent denies the matters and things alleged in

part 4 of Paragraph VIII, and each and every part of the
46 same in manner and form as alleged, and this respondent further states that it made no finding with respect to the divisions between the St. Louis Southwestern Railway Co. and the Manufacturers Railway Co. as alleged in said petition, but on the contrary expressly reserved determination of the question of divisions for further consideration if the necessity for such consideration should later arise.

(5) This respondent denies the matters and things alleged in part 5 of Paragraph VIII, and each and every part of the same in manner and form as alleged.

(6) This respondent denies the matters and things alleged in part 6 of Paragraph VIII, and each and every part of the same in manner and form as alleged, and this respondent further states that it made no finding with respect to the divisions between the St. Louis Southwestern Railway Co. and the Manufacturers Railway Co. as alleged in said petition, but reserved determination of the question of divisions for further consideration if the necessity for such consideration should later arise.

(7) This respondent denies the matters and things alleged in part 7 of Paragraph VIII, and each and every part of the same in manner and form as alleged, and this respondent further states that it made no finding with respect to the divisions between the St. Louis Southwestern Railway Co. and the Manufacturers Railway Co. as alleged in said petition, but reserved determination of the question of divisions for further consideration if the necessity for such
47 consideration should later arise.

IX.

Respondent alleges that the matters and things alleged in the petition were all before the Interstate Commerce Commission in the various hearings had before it in docket No. 3151, to which the petitioners were parties, and were fully heard and determined by it and were within its power and authority to hear and determine under the provisions of the act to regulate commerce. In its reports in writing with respect thereto, made after full hearings on due notice to all the parties, which state its conclusions, together with its decisions, order or requirement in the premises, the matters and things of which complaint is now made were fully considered and foreclosed in findings of fact and conclusions based upon substantial evidence adduced on issues made by the parties.

Further answering, this respondent denies each and every part of said petition in so far as it has not been herein admitted, denied, or otherwise traversed. This respondent further denies any fact or facts alleged in said petition which contradict any fact or facts found by this respondent in its said reports and order. This respondent further denies any conclusions of law or inferences of fact alleged in said petition which are inconsistent with any conclusions of law or findings of fact by this defendant in its said reports and order.

Wherefore, having fully answered, this respondent prays that
48 the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate in the premises.

INTERSTATE COMMERCE COMMISSION,
By JOSEPH W. FOLK,
CHARLES W. NEEDHAM,
EDWARD W. HINES,
Counsel.

CITY OF WASHINGTON,
District of Columbia, ss:

I, Judson C. Clements, on oath depose and say that I am a member of the Interstate Commerce Commission and make this affidavit on behalf of said Commission; that I have read the foregoing answer and know the contents thereof, and that the same is true.

JUDSON C. CLEMENTS.

Subscribed and sworn to before me, a notary public within and for the District of Columbia, this 10th day of February, A. D. 1915.

GEO. B. McGINTY, [SEAL.]
Notary Public.

49 EXHIBIT A.

50 No. 3151.

MANUFACTURERS RAILWAY COMPANY et al.
v.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY et al.

Submitted December 1, 1910; Decided June 21, 1911.

1. The Manufacturers Railway Company is a common carrier at common law and therefore within the provisions of section 1 of the act to regulate commerce, and the payment to it of a reasonable portion of the St. Louis rates for the terminal switching services rendered by it is not unlawful.
2. The act to regulate commerce limits its application, with respect to the transportation by rail of persons and property, to carriers by rail, or partly by rail and partly by water, which are "common carriers." The act does not define what is necessary to constitute a person or corporation a common carrier, nor does it empower the Commission to lay down the tests. It follows that the expression "common carriers" used by the legislature means those carriers which are common carriers at common law and which have complied with such requirements as may have been imposed by constitutional or legislative authority.

3. The cancellation from their tariffs by defendants of all divisions and absorptions which have been for many years allowed the Manufacturers Railway, and which have been included in the St. Louis rates, has subjected complainant shippers to the payment of unjust and unreasonable charges and to undue discrimination and disadvantage.
4. The principles announced by the Commission in In the Matter of Divisions of Joint Rates and other Allowances to Terminal Railroads, 10 I. C. C. Rep., 385; General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. Rep., 237; Solvay Process Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. Rep., 246; Crane R. R. Co., v. P. & R. Ry. Co., 15 I. C. C. Rep., 248; Crane Iron Works v. C. R. R. Co. of N. J., 17 I. C. C. Rep., 514, in respect to the amount of allowances to carriers the lines of which are owned by those whose industries are served in connection with other carriers, and the character of the services for which lawful allowances may be made, adhered to.
5. This case will be set down for further hearing, for the purpose of determining the amount of charges for the services of complainant carrier which will be just and reasonable and free from undue discrimination.

Nagel & Kirby, Cassoday & Butler, Schnurmacher & Rassier, and S. H. Cowan for complainants.

Martin L. Clardy, Henry G. Herbel, and James C. Jeffery for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

51 E. C. Kramer and Edward Barton for Baltimore & Ohio Southwestern Railroad Company.

E. B. Peirce, M. L. Bell, and Fred H. Wood for Chicago, Rock Island & Pacific Railway Company.

Fred H. Wood for St. Louis & San Francisco Railroad Company and Chicago & Eastern Illinois Railroad Company.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Henry L. Stone and Nelson W. Proctor for Louisville & Nashville Railroad Company.

John G. Williams for Vandalia Railroad Company.

N. S. Brown for Wabash Railroad Company.

Sidney F. Andrews for Illinois Central Railroad Company and Mobile & Ohio Railroad Company.

E. P. Humphrey, E. C. Kramer, and Sidney F. Andrews for Southern Railway Company.

William Gray for Chicago, Burlington & Quincy Railroad Company.

L. T. Williams for Toledo, St. Louis & Western Railroad Company.

Blackburn Esterline for Chicago & Alton Railroad Company.

Frank B. Kellogg for certain interveners.

Report of the Commission.

CLEMENTS, *Chairman:*

The complainants in this case, the Manufacturers Railway Company and a number of shippers located on its lines, filed a petition asking that through routes be established to and from points on its lines of railway in St. Louis, Mo., from and to points on the lines of each of the defendant railway companies and points beyond, also for the fixing of reasonable divisions or absorptions out of the St. Louis rates to be paid to the Manufacturers Railway Company for terminal services rendered by it, and for reparation.

The petition alleges that there are many industries in the southern part of St. Louis served by the Manufacturers Railway that are not served by any other railroad, and others which are served by it, as well as by other railroads; that prior to March 1, 1910, there existed through routes and joint rates over the lines of defendant carriers and complainant Manufacturers Railway Company to and from points on the line of said complainant company; that on December 31, 1909, defendants notified the Manufacturers Railway Company that after March 1, 1910, no allowance would be made to that company out of the St. Louis rates for its service; that said action by defendants was the result of an unlawful combination and conspiracy in violation of the Sherman antitrust law; that pursuant to
52 said action defendants' then existing tariffs were canceled, and since that date the St. Louis rates have not been applicable to and from points on the lines of the Manufacturers Railway, and that the public served by the lines of that company has been subjected to unreasonable charges.

It is further alleged that by reason of the action of defendants there has not existed since March 1, 1910, any reasonable or satisfactory through route from or to any of the industries on the line of the Manufacturers Railway Company, and that the effect of the cutting off of said company from an allowance out of the St. Louis tariff rates will be to deprive it of a large volume of traffic that will be diverted to the St. Louis, Iron Mountain & Southern Railway Company, hereinafter referred to as the Iron Mountain, the only competitor of the Manufacturers Railway Company in the southern part of the city of St. Louis; that the Manufacturers Railway Company is organized under the Missouri statute providing for the incorporation of railroads as common carriers; that it has been granted several franchises by the city of St. Louis for the use of public streets upon condition that it will perform the duties of a common carrier of freight for the citizens of and industries located in St. Louis and East St. Louis; these franchises require the construction and operation of inclines on the banks of the Mississippi River and a belt line on the east side around the city of East St. Louis, and contain a provision that the Manufacturers Railway Company "shall be run, operated, and managed independently by its own officers and stockholders in free and fair competition at all times;" that it is

being taxed under the laws of Missouri providing for the taxation of franchises and property belonging to common-carrier corporations; that said complainant company files reports in accordance with the act to regulate commerce and keeps its accounts in accordance with the system prescribed by the Interstate Commerce Commission, and that its tariffs are duly published and filed in accordance with law.

It is further alleged that the refusal of defendants to longer continue through routes and joint rates in unjust, unreasonable, and unlawful, and constitutes an unlawful discrimination as between localities, industries, and shippers on or near the lines of the Manufacturers Railway and other localities, industries, and shippers on or near the lines of other carriers in St. Louis; and, further, that by reason of their action defendants have subjected the locality in which the Manufacturers Railway Company is located, and the traffic shipped over its lines and thence over the other lines of railroads, to undue and unreasonable disadvantage and gives undue and unreasonable preference and advantage to the shipping public in other localities of St. Louis and to the particular description of
53 traffic shipped by industries and persons in such other localities in violation of law.

Some of the defendants deny that complainant, Manufacturers Railway Company, is a common carrier engaged in interstate commerce, or that through routes and joint rates existed prior to March 1, 1910, and allege that the tariffs referred to in the petition merely provide for absorption of switching charges of the Manufacturers Railway Company, except as to tariffs on bituminous coal, which gave it a division of the rate; that other satisfactory and reasonable through routes and joint rates now exist for the traffic of complainants. In the answers of several defendants they say that they neither admit nor deny the allegations of complaint, but in view of the decision of the Commission in certain cases, especially Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co., 17 I. C. C. Rep., 338, they submit the question as to whether complainant carrier is an industrial or tap line, or is a common carrier and entitled to through routes and joint rates, and whether the further payment of allowances to complainant carrier is lawful or reasonable, to the judgment and determination of the Commission. The answer of one defendant asserts that it had no doubt as to the legality and reasonableness of its allowances to the Manufacturers Railway Company previous to the date of the decision above referred to, but in view of that decision has fears and doubts as to their legality since said decision. The answers of other defendants deny generally the allegations of complaint. The Iron Mountain avers that the Manufacturers Railway Company was organized and its tracks constructed to serve the Anheuser-Busch Brewing Association alone, and that it is and always has been owned and controlled by the same interests that own and control the Brewing Association; that it handles practically no traffic except for the Anheuser-Busch Brewing Association, and that the services of complainant carrier involve the switching of cars between industrial establishments reached by its tracks to the tracks

of the Iron Mountain and the St. Louis Transfer Company, and is exclusively a switching service.

We have had before us on many occasions and under varying conditions questions involving terminal carriers, industrial and plant facilities and tap lines, and the Commission's decisions in those cases have been referred to at length by both sides in the pending proceeding. In disposing of cases involving these important issues it has been found impossible to lay down any general rule of action that can in justice and under the statute be applied with uniformity. We must of necessity disclose and consider all the features of each particular case presented to us and base our conclusions upon a careful application of the law to the facts. Therefore it is essential to inquire in some detail into the facts here presented rather than
54 rely upon a consideration of former cases which involve facts and conditions not parallel with, but quite dissimilar to those in the case before us.

Although the prayer of complaint is for the establishment of through routes and joint rates, it is admitted of record that there is no difference between the actual handling of the traffic at the present time and prior to March 1, 1910, or, in other words, that through routes still exist. The principal change is in the declination of defendants to absorb the charges for the services of the Manufacturers Railway Company since that date, it being the general position of defendants that if the public does not care to pay for the services of the Manufacturers Railway in addition to the St. Louis rates there are sufficient reasonable and satisfactory facilities for them without its service.

Construing the pleadings in the light of the whole record, there is presented for consideration and determination, first, the legality on the part of defendant carriers in making an allowance out of their rates to the Manufacturers Railway Company for its services as a terminal carrier, and the character of those services; second, the propriety of requiring any charge from the public served by the Manufacturers Railway in addition to the St. Louis rates; and, third, should such allowances be legal, what amounts would be reasonable charges for such services. It becomes necessary, in the consideration of these propositions, to go somewhat into the history of the Manufacturers Railway Company and examine into its relation to the terminal situation in the city of St. Louis.

The Terminal Railroad Association, a corporation, dominates the principal terminal facilities of St. Louis. Its capital stock is owned in equal shares, and it is controlled by the 14 trunk lines entering St. Louis. The terminal or its proprietary or tenant lines own or control all bridges and ferries giving access to all terminals within and all lines directly entering the city of St. Louis, and no interstate shipment can enter or leave St. Louis except over the lines of the terminal or some of its proprietary lines or its or their tenant lines. In St. Louis there are three industrial centers which naturally require terminal facilities. The northern section of the city along the river is one of these centers and is served by a considerable mileage of the Terminal Association and the rails of nine of the trunk lines enter-

ing St. Louis. In the western section of the city, in what is known as the Mill Creek Valley, there are many industries served by a considerable mileage of the Terminal Association and the rails of four of the trunk lines entering the city. In South St. Louis the companies rendering terminal services are the Manufacturers Railway and the Iron Mountain. The St. Louis Transfer Company, one of the subsidiary companies of the Terminal Association, has a line along the river bank, but is physically available only to a
55 negligible extent. The lines of the Iron Mountain generally follow the bank of the river and reach such industries as are adjacent thereto. For a considerable distance along the river there is a steep grade to be overcome in reaching industries situated back from the river, and to confine these industries to the terminal facilities of the Iron Mountain would require a team haul up from the bank of the river. Therefore, in order to extend terminal facilities to this section of St. Louis, it would be necessary to develop them on the higher ground, extending them one or two miles back from the river, following the rise of the bluff, and seek outlets therefrom to the main artery along the river at such points as proper grades may be obtained, thus enabling interstate traffic to flow out from this section down to the lines along the river, and thence reach the outside world. The Manufacturers Railway was developed with this end in view, and industries have been located along its lines which it is now supplying wth these facilities. Due to these physical conditions, it can hardly be held that a carrier whose rails are for the most part confined to the bank of the Mississippi River furnish adequate terminal facilities for this important section of industrial St. Louis, and it seems, therefore, that the facilities furnished by the Manufacturers Railway are both reasonable and necessary.

The Manufacturers Railway Company was incorporated in 1887, with capital stock of $25,000, to construct and operate a railroad two miles in length from a point on the west bank of the Mississippi River, in the city of St. Louis, between Utah and Dorcas streets, westerly to a point on Arsenal street, between Ninth and Eleventh streets, in that city, with branches to factories situated north and south of the main line. In 1905 the authorized capital stock was increased to $100,000, and in 1906, it was again increased to $250,000. In 1888 it leased its tracks to the St. Louis, Iron Mountain & Southern Railway Company for a term of 10 years, and in 1898 this lease was renewed for another term of 10 years. The only outlet from the rails of the Manufacturers Railway was onto the main line of the Iron Mountain on the bank of the Mississippi River. In 1903 the Manufacturers Railway Company undertook the further development of its terminal facilities in that section of the city, and the city authorized several extensions along certain streets and leased to it a part of the public wharf. At the expiration of the lease in 1908 the Manufacturers Railway Company declined to further lease its property to the St. Louis, Iron Mountain & Southern Railway Company and took over the operation of the property itself. The reasons given upon the hearing for withholding the operation of the property from

the Iron Mountain were, that during the time the road was operated by the Iron Mountain the services rendered by it had been continually unsatisfactory and inadequate. This was the universal testimony of all the shippers who were heard. The officers
56 of the Manufacturers Railway testified that it was decided to enlarge and extend the facilities of the Manufacturers Railway as a railroad terminal system with lines into other parts of South St. Louis, serving the public in that portion of the city generally and connecting with all St. Louis lines by junction with the St. Louis Transfer Company. While the Manufacturers Railway was operated by the Iron Mountain, during 21 years, and also when operated under the tariffs which permitted an allowance to the Manufacturers Railway itself in 1909 until March 1, 1910, delivery has been made to the public served by it at the St. Louis rates.

At the present time complainant carrier operates about 20 miles of track, of which 2¼ miles are classed as main track and the remainder as sidetrack, switches, and yard track. Of this total 20 miles 6 miles are leased from the Brewing Association and are used in part both for the services of the brewery and the public. The only physical connection other than that with the Iron Mountain is with the St. Louis Transfer Company, one of the constituent properties of the Terminal Railroad Association. The complainant road owns and operates four locomotives and employs a total of 110 men. No passenger business or less-than-carload business originates on its lines. The business moving over its rails is delivered on, or originates on, its public team tracks or on sidings located at industries along its lines, and is handled between these points and the tracks of either the St. Louis, Iron Mountain & Southern or the St. Louis Transfer Company. The complainant carrier issues an "exchange ticket," which is exchangeable for a bill of lading, if so desired, following the general practice in St. Louis in such matters. It participates in settlement of loss and damage claims in the same way as the Terminal Association, namely, on a basis of a 10-mile haul.

The majority of the stock of the Manufacturers Railway Company is owned by the same interests owning a majority of the stock of the Anheuser-Busch Brewing Association. This relation in the ownership of the stock of these companies is significant, and is one of the elements in this case pressing for consideration in conjunction with the history of the development of the property and its actual present status as a carrier of commodities. The question of the ownership of a terminal company by the controlling interests in one of the large patrons of the terminal has been before the Commission in a number of cases, in one of which, In re Divisions of Joint Rates, 10 I. C. C. Rep., 385, we took occasion to say:

The mere fact that this road is to-day entirely owned by the largest individual shipper over it, or that it was originally organized and built for the purpose of doing the work of that shipper is not, in our opinion, controlling against the legality of the transaction before us. While there may be grave objections to allowing
57 shippers to build and operate railroads over which their traffic moves, the interstate commerce act contains no prohibition of that kind.

Since the year 1904 when the conclusion above referred to was announced, Congress has passed the amendments of 1906 and 1910 to the act to regulate commerce, and although in 1906 it was made unlawful for a carrier to transport commodities owned by it or in which it was interested directly or indirectly, nothing was said either in the amendment referred to or the one of 1910 with regard to the ownership of the carrier by shippers over its lines. The Manufacturers Railway Company in its inception may have been designed principally as a plant facility, but it has from the first had other patrons than the Anheuser-Busch Brewery, and it has never been owned by the Brewing Association. Beginning in the year 1904 when it was first decided not to re-lease the property and up to the present time large sums of money have been expended in developing it, practically none of which was necessary in connection with the service of the brewery. The testimony is that of a total of $800,000 so expended only 10 per cent of it has been necessary for the purpose of serving the brewery. In addition to a number of team tracks at different points on its lines, the complainant carrier serves some 20 industry tracks or sidings, 12 of which are said to be for industries served exclusively by it.

For the year ending April 30, 1910, there were 42,970 cars handled by the Manufacturers Railway Company, and of this number 37,546 cars were handled for the Brewing Association, and 5,424 cars were handled for some 87 other industries or patrons, of which 35 shipped or received 10 cars or more. It is stated that when these comparisons are shown on a tonnage basis instead of a carload basis the percentage of traffic for the general public is much larger. Although under its own management and operation, the service of the Manufacturers Railway for the brewery has increased, yet at the same time the proportion of traffic for others than the brewery has grown under somewhat trying conditions from 14 per cent to 27 per cent, based on tonnage, of the entire business of the railway, due, it is said, to the improved service rendered since the change in management. It is of record in this case that the traffic of the Anheuser-Busch Brewing Association constitutes one-thirtieth of the total traffic of the city of St. Louis. There are a large number of carriers at St. Louis participating in the traffic of that community, and if the tonnage of the Brewing Association were all handled by any one of these lines, it would of necessity constitute a large proportion of that carrier's total St. Louis business. It appears, further, that two-thirds of the trackage of the Manufacturers Railway has been constructed solely for the purpose of serving the public, while the remaining one-third is used in serving both the brewery and
58 the public. It can not be assumed, however, that all shipments moving to or from the brewery were shipments of the brewery. In the transaction of its very large business with the public it is no doubt true that a great many other interests are quite directly affected by the insterstate commerce flowing to and from the brewery.

Referring in a somewhat general way to the question of common

carriers in the Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co., 17 I. C. C. Rep., 338, we took occasion to say:

It is sometimes said that the essential characteristic of a common carrier is that it holds itself out as such to the world, and in a certain class of cases some such test has been applied; and where there is a shipping world to which it may hold itself out as a common carrier and which it may serve in that capacity, the test suggested may be a proper one.

In the case before us we find the Manufacturers Railway Company located in the heart of an extensive and growing industrial center in one of the large cities of the country, and it is not only holding itself out for service to the public, but has during recent years been actively and successfully soliciting business among the general public and has succeeded in rapidly increasing the percentage of its total business done for others than the brewery.

The act to regulate commerce, limiting its application as it does to common carriers, was passed in full view and recognition of the common law under which the attitude and actions of the person, whether natural or artificial, determines whether or not he or it is in law a common carrier. Speaking in general terms, a carrier could become a common carrier by offering its services as such to the public upon first complying with the statutory or police requirement demanded of it by charter or otherwise. The test to be applied in determining whether a person is a common carrier really is whether he holds out, either expressly or by a course of conduct, that he will so long as he has room, carry for hire the goods of every person indifferently who will bring goods to him to be carried. Nugent v. Smith, 1 C. P. Division 19, 27.

With respect to the transportation of persons and property by rail the act to regulate commerce has not undertaken to specify in terms what shall, for the purpose of that statute, be considered to be a common carrier, but has proceeded upon the foundation of the common law as to public callings. It is not, therefore, within the authority of the Commission to pronounce any carrier by rail not to be in fact or in law a common carrier if by the tests and principles of the common law, coupled with such requirements as may have been imposed by constitutional or legislative authority, it would be held to be such.

The right of such a carrier to participate in through routes and joint rates and share in the earnings of such rates with others
59 is a wholly different question and one clearly within the purview of the statute and under the jurisdiction and control of the Commission as expressly provided in the act. The purpose of the act in this respect must be fulfilled by action appropriate to the end in view and at the same time effective to prevent unjust discrimination in any form, enforcing reasonable requirements and limitations in respect to the establishment of through routes and joint rates and the sharing of the earnings thereunder consistently with all other provisions of the statute in such manner as will result in substantial justice to all the parties in interest, and the observance

of the standards of the law in the public interest. Crane Iron Works v. C. R. R. Co. of N. J., 17 I. C. C. Rep., 514.

It seems to be clear that the theory of the law is that these beneficent and just purposes can be accomplished without the assumption of authority on the part of the Commission to outlaw any common carrier by rail at common law, as modified by constitutional or statutory authority, and thus put it out of business or deny its use to the public, so long as it is willing to hold itself out as a common carrier and perform its functions as such. To hold otherwise in a case like the one before us, for the purpose of trying to avoid undue advantage to a particular shipper, such as the Brewing Company, would be fraught with disaster to the industries and patrons along the lines of the complainant company, who have no interest whatever in the road other than to use it in its capacity as a public servant according to their well-recognized rights at common law.

In view of all the facts, circumstances, and conditions bearing upon this question, we have no doubt that the Manufacturers Railway Company is in fact a common carrier at common law, notwithstanding any modification thereof, and therefore within the provisions of the first section of the act to regulate commerce, and that the payment to it of a reasonable and just portion of the St. Louis rates for the terminal services rendered by it is not unlawful.

Having disposed of the question of legality of the divisions or absorption charges, it remains to consider whether or not it is lawful for the defendants to require the public served by complainant to pay therefor in addition to the St. Louis rates. From the inception of the Manufacturers Railway Company in 1887 to 1910, 23 years, the defendant carriers uniformly absorbed these charges. The public located on its lines have been in this respect on the same footing as have been the shippers located adjacent to the lines which now constitute the Terminal Association or its subsidiary and proprietary lines. As long as the lines of the Manufacturers Railway were under lease by the Iron Mountain they were practically a part of the terminal system of the city operated and controlled by the community of interest of the trunk lines, the Iron Mountain being a party to the terminal agreement. The record does not state what the amount of absorption was, but as the Iron Mountain rendered the service, it received out of the St. Louis rates whatever allowance was made when the traffic was destined to or from a point not on its own lines. It is apparent, therefore, that since March 1, 1910, the transportation status of the public located on or adjacent to the lines of the Manufacturers Railway has been completely changed, as they do not now receive the service of that carrier on payment of the St. Louis rates. No testimony whatever was introduced on behalf of the defendants, and therefore there was no effort on their part to show any change in circumstances and conditions which would justify what has in fact resulted in an increase in transportation charges to the public located on the lines of complainant. The testimony of the shippers on the lines of the Manufacturers Railway, who are complainants in this case, demonstrates clearly that if they are now compelled to pay for the service

of that carrier in addition to the St. Louis rates they will be placed at a serious disadvantage in competition with other shippers located on the lines of other terminal facilities where the terminal charges are uniformly absorbed out of the St. Louis rates.

Much has been stated in the record concerning the alleged unlawful combination and conspiracy in restraint of interstate commerce, in violation of the Sherman antitrust law, on the part of defendants, disclosed by the sequence of events leading up to the cancellation of the tariffs that granted a division to or absorbed the charges of complainant carrier. We have carefully considered these features of the controversy and note that the manager of the Terminal Railroad Association testified that the matter of the cancellation of these tariffs received the attention of his association immediately following the publication in the St. Louis press of plans for the further development of the property of the Manufacturers Railway Company giving it outlets to the outside world independent of the Terminal Railroad Association, its proprietary or subsidiary lines. The great care and scrutiny with which the agreement by the trunk lines to cut off the allowances of the complainant carrier was consummated, through the medium of the president of the Terminal Association, indicates beyond question that no individual carrier would risk taking the proposed action until assured that all of its competitors were doing likewise. While this phase of the case has been pressed upon our attention at some length its chief value respecting questions cognizable by the Commission lies in the effect it has had in increasing the cost of transportation to the public and increasing the revenues of the defendants.

On the whole record we are of the opinion and find that the action of defendants in canceling the said divisions and ab-
61 sorptions, which have been for many years included in the St. Louis rates, has subjected complainant shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges and to undue discrimination and disadvantage. This has been accomplished by canceling what were in effect joint rates or charges and leaving in effect what are found to be unjust, unreasonable, and discriminatory charges.

One of the reasons advanced by defendants for the cancellation of the absorptions was their doubt as to the reasonableness of the allowances that had been named in the tariffs, but they offered no proof at the hearing bearing thereon. The answers of defendants disclosed that there was in effect a failure to agree to the apportionment or division of the rates or charges on the part of the complainant carrier and defendants, and this situation imposed upon the Commission under the statute the duty of adjusting the matter.

Since the hearing, however, practically all of the carriers have published and filed tariffs in which are stated allowances or divisions with the Manufacturers Railway Company. These tariffs have been suspended by the Commission pending the decision of this case. An order canceling these suspensions will be entered effective July 15, 1911. It is our understanding that the divisions or allowances made

to the complainant carrier in the suspended tariffs are somewhat lower than was permitted in the tariffs which were in effect for many years. The Commission sees no reason to doubt the correctness of the principles announced by it in the determination of the following cases: In the Matter of Divisions of Joint Rates and other Allowances to Terminal Railroads, 10 I. C. C. Rep., 385; General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. Rep., 237; Solvay Process Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. Rep., 246; Crane R. R. Co. v. P. & R. Ry. Co., 15 I. C. C. Rep., 248; Crane Iron Works v. C. R. R. Co. of N. J., 17 I. C. C. Rep., 514, in respect to the amount of allowances to carriers the lines of which are owned by those whose industries are served by them in connection with other carriers, and the character of the services for which lawful allowances may be made. The responsibilities and liabilities of each carrier in the line composing a through route under the law can not be evaded by it.

In view of the peculiar features of this case, as hereinbefore described, it is highly important that the allowances to the Manufacturers Railway Company and the services rendered by that company to its patrons in consideration of said allowances should be equitably adjusted, and the duty and responsibility rests upon the carriers to closely guard these features in making any allowances or divisions to the complainant carrier in order that they shall not make themselves liable under the statute for unjust discrimination or
62 undue preference or advantage. The record before us does not present a sufficient basis for a satisfactory determination of the question as to the reasonable and just division or allowance to the complainant carrier and the further question as to whether a part of the services performed by it is or is not plant-facility service within the principles enunciated in the cases above referred to. Respecting these questions further investigation by the Commission will be made.

The record contains statements from defendants to the effect that should the Commission sustain the legality of the divisions or absorptions reparation should be awarded on the basis of the reasonable allowances determined upon by the Commission. When after further hearing and examination the proper amounts have been ascertained, reparation will be awarded on the basis of our final action respecting divisions or allowances.

No order will be entered at the present time.

LANE, *Commissioner*, concurring:

I am in agreement with this report to the extent that it decides that the Manufacturers Railway is as to certain of its traffic a common carrier. It is also doubtless a plant facility. As a common carrier it is entitled to recompense for the service which it gives; as a plant facility we have nothing to do with it. The difficulty we have had in deciding this case, even to the extent that it is decided here, arises out of the fact that the Commission has not exercised the power granted to it under the law to separate terminal from transportation charges or require the carriers to do so. The situation in St. Louis is simply this, so far as it has been revealed herein: The

line carriers have combined and established a terminal which includes a great body of tracks, stations, warehouses, industrial spurs, and other terminal facilities. These are availed of by the carriers entering the city upon an agreed basis. It is proposed by these lines that this terminal shall be a monopoly and that the rates of freight stated in the tariffs shall include delivery within this terminal. They canceled the allowance to the Anheuser-Busch road, the plant herein, because they feared that a rival company was being developed. So long as the beer people confined themselves strictly to hauling their own cars, or those of affiliated institutions, an allowance was made for delivery or receipt of cars as going to or coming from the brewery plant, which approximated $200,000 a year. This was in reality a cartage allowance, and the railroads seemed to have no doubt about their right to make it until by its extensions the Manufacturers Railway threatened to become a rival. Then came the simultaneous cancellation of these allowances; and while this case has been pending one by one the carriers have given way to the very forceful
63 demands of the brewery people who own the railway, so that immediately after the issuance of this report the old order of things will be reestablished. Then the Commission will have to take upon itself the determination of the question as to what the allowance should be and whether it should be extended to the brewery people who own the railway or not; in short, whether we will follow the theory of the International Harvester case, the Solvay Process case, and the Crane Railroad case. In the Matter of Divisions of Joint Rates and other Allowances to Terminals, 10 I. C. C. Rep., 385; Solvay Process Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. Rep., 246; Crane R. R. Co. v. P. & R. Ry. Co., 15 I. C. C. Rep., 248.

I can not but believe that the solution of this question of terminal allowances for industrial delivery can only come when we have separated the line charge from the terminal charge. The carriers of the United States have all but universally made industrial spurs which were connected with their roads a part of their terminal facilities and have made delivery to industries without additional charge where those industries were within switching limits. In this way they have secured the building of many thousands of miles of tracks, which have in the course of time become their property, and the use of almost invaluable facilities which otherwise they could not have secured. Where, however, an industry has grown large enough so that it needed for its own convenience one or more engines to do interplant switching the carriers have generally delivered the car at an interchange track whence it was hauled to the industry by the plant's own locomotive, and in such case the main line has made an allowance to the industrial road for spotting the car or not, as it saw fit. If the industry was sufficiently powerful in that it had a great volume of traffic it generally secured the allowance, especially if it was in competitive territory. And the allowance was justified by the carrier upon the ground, not that it was "buying business," but on the ground that it did make delivery upon other of the industrial spurs with which it had connection and that its rate was un-

derstood as including such delivery. No doubt many of these allowances were thinly veiled rebates to large industries, but they had much to support them in the practices of all the carriers. We are now coming under a system of regulation in which one universal rule must be applied to all industrial roads which are in part plant facilities and carriers' facilities—plant facilities, in that they are a substitute for horses and wagons in the carriage of goods from one part of a plant to another and in the delivery of the plant's traffic to a trunk line; carrier facilities, in that they are an extension of the terminals of the trunk line to the industry.

This situation is so complex that, in my judgment, it never can be settled so as to avoid giving a rebate to industry or discriminating against the industry until the trunk lines state in their tariffs separately and distinctly what portion of their rates is allowed for terminal service. We would then have this condition at St. Louis: The regular transportation rate to St. Louis would be stated and also a separate rate for delivery upon the carrier's own terminals or for delivery elsewhere. If delivery were made on the terminals of the Manufacturers Railway, a certain separate and specific amount would be charged for the service that it gives. But the shipper would not be charged for a delivery on the carrier's own terminal. The railroads of the United States have carried the art of the classification of freight to a finer point than have the other railroads of the world, but they have dealt in a very large and by no means a precise manner with the question of allowances or the classification of terminal services. This is a difficult and almost stupendous task, but it is one to which the carriers must address themselves sooner or later. It would doubtless be highly satisfactory to most of the roads were the law to say that no allowance whatever should be made to a road that was owned or controlled by a plant, even though that road served other industries or was in general use as a common carrier; but when rates have been made with respect to an allowance to such roads or a division therewith, such an adjustment would not be equitable. Especially is this true when the carrier itself for its flat rate makes delivery upon its own terminals or the industrial spurs of its customers. Such policy would not only lead to preference but would in the course of time concentrate all industry directly upon the lines of the roads themselves, for upon these lines delivery of carload freight would be made direct at the tariff rate and industries not on such lines but on other lines would be compelled to pay an additional charge. If a shipper is not to avail himself of the terminal facilities of a main-line carrier, it does not seem fair that he should be required to pay the full amount that is paid by one who uses these terminals. The business of this country has been done in so large a way that small matters of this character have not been given much consideration, especially as the railroads themselves, because of competitive conditions, have been generous. In England, however, troubles of a similar character have led to legislation which makes a distinction between the charge for the line haul and that for the use of the terminal.

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HARLAN, *Commissioner*, dissenting:

I am unable to concur in the views of the majority and will briefly indicate the reasons that have led me to a different conclusion in this case.

As is well known many large industries, as a part of the equipment necessary to the economical conduct of their business, have
65 been compelled to install rails in and about their plants and to operate them with their own locomotives. Customarily the cost is charged up directly to the industry. But when the traffic is large enough to induce the regular lines to compete for it the common practice is to incorporate a railroad company under the local law and, in form at least, to commit the operation of the plant tracks and equipment to it. The industry thus puts itself in a position, through its subsidiary company, to receive, under color of right, a switching allowance or a division out of the rate. Ordinarily there is no outside traffic for the subsidiary road to move, but in some cases other industries can be served and some traffic is moved for them. In either event the result to the proprietary industry is that an important and often a very large part of the cost of conducting its plant is transferred to the expense account of the regular carriers. The contributions thus made by carriers to various industries must, in the aggregate, amount to a very large sum annually, and the burden is laid upon the general rates which they exact from the public at large. In some cases, I can not doubt, the financial aid thus received is sufficient to determine the prosperity of the particular industry as compared with similar and possibly competing industries that have to get along without an allowance or have not installed plant tracks and thus have no ground upon which to base a demand for similar contributions from the carriers. The contribution is made in different forms and under a different variety of circumstances. By way of illustration of what is actually done under the pretense of legal authority it may be well to refer to the brewery of the Lemp Brewing Company in the immediate neighborhood of the Anheuser-Busch Brewing Company. It is a large industry, but relatively small when compared with the Busch brewery, its traffic amounting to but 10,000 or 12,000 carloads a year. It is situated on the hills of South St. Louis and the streets leading down to the river front are of an unusually severe grade. To meet the difficulty involved in getting its traffic to and from the regular lines on the water front it has abandoned the use of horses and wagons and has built an inclined track from its plant down the hill. The grade is so severe that a locomotive can not be used; instead there has been devised a powerful drum operated by a stationary engine by means of which, with steel cables, cars are pulled up from and let down to the tracks of the regular carriers. The drum and cables and stationary engine have been incorporated as the Western Cable Railroad Company, and as a matter of fact it actually moves cars up and down the hill for some immediate neighbors of the Lemp Brewing Company at a charge of $2 a car. It is scarcely reasonable to call this

contrivance a railroad within the meaning of the act to regu-
66 late commerce, but as a matter of fact within the past few days tariffs have been filed by one or two of the regular lines providing an allowance to that company on the theory that it is a railroad and that its track is an addition to the public rail facilities of the city of St. Louis. In the vicinity are other industries, some with a traffic of from 1,000 to 2,000 carloads a year which is handled back and forth to the lines of the regular carriers by horses and wagons. They get no allowances from the carriers and have to bear their own burdens.

The problem is not free from difficulty, and yet in my own mind I can not escape the conviction that the only difference between these different shippers is the different means that they have resorted to as the most economical method in each particular case of doing precisely the same thing, namely, of reaching the tracks of the public carriers with their traffic. Nor can I escape the conviction that the payment by the carriers of an allowance to one of them and the withholding of a similar allowance to another amounts to an unlawful inequality within the power of the Commission under the present law to control and regulate on some satisfactory basis. There is a widespread feeling that the matter should be regulated and that the time has come for adjustment of these relations between the regular carriers and large industries operating industrial or plant tracks through subsidiary companies. There seems to be a general movement throughout the country to rid interstate transportation of what must be regarded as a manifest wrong and inequality. This is shown by the recent action of the trunk lines in laying before us a statement of the industries which, through their subsidiary railroad companies, have been receiving allowances and divisions which it is now proposed to cancel. While protests were made by some shippers against this proposed action, it was a notable feature of the conference that the protests were based not on the claim of a right to receive divisions and allowances through their subsidiary railroads but altogether on the theory that the few exceptions proposed by the carriers in their statement did not differ in principle from other cases and that unlawful discriminations would result from the recognition of those cases as exceptions.

The general subject matter has been dealt with by the Commission in a number of formal cases which I shall not stop to analyze or apply to the facts immediately before us on this record. General Electric Co. v. N. Y. C. & H. R. R. R. Co., 141 C. C. Rep., 237; Solvay Process Co. v. D., L. & W. R. R. Co., 14 I. C. C. Rep., 246; Crane R. R. Co. v. P. & R. Ry. Co., 15 I. C. C. Rep., 248; Crane Iron Works v. C. R. R. Co. of N. J., 17 I. C. C. Rep., 514. In the latter case, although one-fifth of the tonnage of the Crane Railroad was carried for outside shippers, it was nevertheless held to be a mere plant facility of the
Crane Iron Works, the proprietary company, and as such not
67 entitled to a division of the rates. In those cases we took a forward step in the suppression of what seems to me a growing evil in our transportation methods and in the relations existing between carriers and shippers. In the disposition made of the case

now before us the Commission, in my judgment, is taking a step backward.

The Anheuser-Busch Brewing Association and the Manufacturers Railway Company are owned in the same general interest. The brewery, as in the case of the Lemp Brewery, is also on the hills of South St. Louis. It covers 35 city blocks, or about 126 acres. Its various malt houses, brew houses, warehouses, shops, and other buildings are very numerous. Its traffic is said to amount to one-thirtieth of the entire inbound and outbound tonnage of the city of St. Louis. During the year preceding the hearing the freight handled for it by its subsidiary railway company approximated 40,000 carloads. There can be no doubt, therefore, and I do not understand that the point is controverted at all, that the various tracks and sidings in and around the various buildings and leading to different parts of the 126 acres are nothing more or less than a part of the equipment that has been found necessary in the economical management of the brewery, and therefore in every real and just sense of the word are a mere plant facility. The fact that the subsidiary railway performs annually for the brewery not less than 10,000 switching movements between different parts of the plant is alone sufficient proof of the real need of the tracks and of their actual relation to the brewery. I refer here particularly to what may be designated generally as the east and west tracks. There is a track in Second street that was recently laid and over which, as I understand the matter, the traffic of the brewery ordinarily does not pass. It required not only an additional municipal ordinance but an amendment to the charter of the subsidiary railroad company before this track could lawfully be constructed. Possibly that part of the tracks operated by the subsidiary company is fairly to be regarded as an addition to the public transportation facilities in that part of the city. This, however, can not be said with equal force of the east and west tracks. Although some traffic for outside industries is moved over some of those tracks its amount is very small compared with the large tonnage of the brewery, and much smaller proportionately than the outside traffic in the case last cited, where, as heretofore stated, we held the tracks to be mere plant facility. In my judgment no different principle should be applied in the case before us. At any rate there must be a point where the tracks operated by the Manufacturers Railway cease to be public, in the real use made of them, and become a mere plant facility of this great industry. Instead of ascertaining that point and treating the tracks beyond it as a plant facility the
68 report of the majority extends the St. Louis rate throughout the 126 acres covered by the brewery and to every building that forms a part of the plant. The extent of the contribution that the regular lines propose thus to make to this industry may be judged from the fact that tariffs have been filed, since this proceeding was commenced, providing for an allowance of $4.50 per car. On 40,000 carloads a year this would aggregate a large return to the brewery, through its subsidiary company, whether the investment in the tracks be stated at $500,000 or $1,000,000, and would relieve it of what must doubtless be among the largest items in its expense account. It

is true that the carriers are warned in the majority report against overdoing the matter and they will doubtless hesitate to contribute to the industry to the extent provided in their tariffs. Nevertheless the principle of contribution is sustained without differentiating any part of the tracks from that part that can have no other real character than that of a plant facility without which the industry could not be economically conducted.

For these reasons I am compelled to withhold my assent to the majority report.

69 EXHIBIT B.

70 No. 3151.

MANUFACTURERS' RAILWAY COMPANY et al.
v.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY et al.

Submitted January 18, 1913; Decided June 21, 1913.

Upon further consideration of this case on supplemental hearing, Held, That

1. The Manufacturers' Railway, as found in the original report, is a common carrier subject to the act to regulate commerce, but original finding that the trunk lines serving St. Louis are subjecting its shippers to undue prejudice and disadvantage because they absorb the charges of the Terminal Railroad Association, the lines embraced within which they own or control, in order to make delivery on the rails of that association at the St. Louis rate, while refusing contemporaneously also to absorb the rate of the Manufacturers' Railway, an independent terminal carrier, reversed.
2. The payments formerly made to the Manufacturers' Railway by the trunk lines serving St. Louis out of their through rates were absorptions in compensation for services rendered for the trunk lines, and were in no sense divisions of joint rates for services rendered for the shippers on the Manufacturers' Railway, as they would necessarily be considered to be under joint rates prescribed by this Commission.
3. There is a well-defined distinction between absorptions, allowances, and divisions of joint rates, which once recognized in the establishment of the joint rate, will render immaterial the question whether, in this case, the stock of the Manufacturers' Railway and of the Anheuser-Busch Brewing Association, its principal industry, is in common or independent ownership, as the latter will then necessarily be treated in all respects upon the same basis as will the shippers located on or served by the Manufacturers' Railway who have no interest in that railway or in the brewing association.

4. The present payments to the Manufacturers' Railway by the trunk lines serving St. Louis under their absorption tariffs are unlawful and should be canceled.
5. Through routes and joint rates should be prescribed between the trunk lines and the Manufacturers' Railway, under which the trunk lines will retain their full rate to St. Louis, the division of the joint rate accruing to the Manufacturers' Railway to be paid to it by its shippers, including the Anheuser-Busch Brewing Association, instead of by the trunk lines.

Nagel & Kirby and Schnurmacher & Rassieur for complainants.

Henry L. Stone and W. A. Colston for Louisville & Nashville Railroad Company.

Henry E. Stone for Baltimore & Ohio Southwestern Railroad Company; Chicago, Peoria & St. Louis Railway Company;
71 Illinois Central Railroad Company; Southern Railway Company; and Wabash Railroad Company.

D. P. Connell for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Edward A. Haid for St. Louis & San Francisco Railroad Company.

John G. Williams for Vandalia Railroad Company.

Douglas W. Robert and Robert & Robert for Chicago & Alton Railroad Company and Toledo, St. Louis & Western Railroad Company.

Supplemental Report of the Commission.

CLEMENTS, *Commissioner:*

In the original report in this case, 21 I. C. C., 304, we had under consideration the question of the status of the Manufacturers Railway as a common carrier under the act to regulate commerce and its right under that statute to receive and demand from the trunk line carriers serving St. Louis divisions or absorptions out of their joint rates to and from St. Louis on traffic from and to interstate points handled by it as the terminal or originating line. This carrier connects with the trunk lines in South St. Louis and transports carload freight between their termini and points on its line in that city. The principal industry served by it is the Anheuser-Busch Brewing Association, although it reaches numerous other industries by private spurs direct and still others located on or near its line by public team tracks. Prior to March 1, 1910, the trunk lines made an allowance to the Manufacturers Railway of from $3.50 to $5.50 per car out of their rates to St. Louis on all traffic received from or destined to points on the rails of that carrier The cancellation of these allowances on that date gave rise to the complaint, which was filed by the Manufacturers Railway and certain of its shippers including the Anheuser-Busch Brewing Association, that shippers located on the Manufacturers Railway were by that action caused to be subjected to undue prejudice and disadvantage because required to pay its

local switching charge of $2 per car in addition to the St. Louis rate. Simultaneously with the cancellation of these allowances to the Manufacturers Railway the trunk lines also canceled similar allowances to twelve other industrial lines in St. Louis, with which they classed the complainant railway. It does not definitely appear to what extent, if at all, these other twelve lines serve industries or shippers other than the owning industry. A majority of the stock of the Manufacturers Railway is owned by the holders of a majority of the stock of the brewing association, by reason of which and of the additional fact that the brewing association is the principal patron of the railway the defendant carriers contend that the service rendered by the railway for all shippers, and if not for all at least for the brewing association, is a plant facility
72 service and therefore that the Manufacturers Railway is not a common carrier within the meaning of the act to regulate commerce, entitled to demand or receive divisions or absorptions out of their joint rates to and from St. Louis. On June 21, 1911, the Commission rendered a partial report and decision in the case, in which it held that the Manufacturers Railway was a common carrier within the meaning of the act and that the cancellation of the allowances to it by the trunk lines was unlawful and subjected the shippers located on its rails to undue prejudice and disadvantage and gave to other shippers in St. Louis located on other terminals an undue preference and advantage. The original record was deemed to be an insufficient basis for the determination of the question of the proper amount of the allowances, if any, which should be made to it by the trunk lines or of the reparation, if any, which should be awarded, and those questions were accordingly held open for determination in a supplemental proceeding. At the original hearing the defendant carriers introduced no evidence except by way of cross-examination of complainants' witnesses. At the present supplemental hearing they introduce testimony not only on the questions reserved for decision but on new phases of the controversy as well, which, they contend, are pertinent to the issues involved, and they ask that the Commission review its original findings upon these records as combined.

The Commission does not look with favor upon this method of procedure on the part of defendants before it. It is the duty of each party before the Commission to present his case at the proper time, which ordinarily is at the time of the original hearing. But in view of the additional evidence now presented on all phases of this controversy and of the importance of the questions to be decided in their effect upon the determination of other cases similar in character, it is deemed proper and necessary that we review the case in its entirety upon the record as now supplemented.

The city of St. Louis is built on the west bank of the Mississippi River, opposite to East St. Louis, Ill. With an occasional exception, the streets paralleling the river are numbered consecutively. Four of the streets, one block apart, crossing the numbered streets at right angles, are, beginning on the north, Lynch, Dorcas, Pestalozzi, and Arsenal, and within the rectangular area of some 35 or 40 city

blocks bounded by Lynch street on the north, Arsenal on the south, and from First street west to Thirteenth, inclusive, are scattered the various plants, brewhouses, shops, etc., of the Anheuser-Busch Brewing Association, referred to herein as the brewery. The Manufacturers Railway will be referred to as the railway. The tracks within this area are leased by the brewery to the
73 railway at a rental of $24,000 annually The squares bounded by the streets Ninth, Thirteenth, Lynch, and Dorcas; Ninth, Eleventh, Pestalozzi, and Arsenal; and Second, Broadway (Broadway being just south of Seventh), Pestalozzi, and Arsenal are devoted to buildings and yards of the brewery exclusively. Although within these bounded areas there are also others in addition to the three following-named departments, they will, for the sake of convenience, be referred to as the bottling department, Budweiser department, and keg department, respectively. The tracks serving all three of these departments are in and between buildings and sheds of the brewery or in the yards adjoining, and are practically inclosed —on some sides by buildings with passageways between and on the other sides by fences or walls surrounding the yards contiguous to the buildings. All of the tracks within these yards are essential to the operation of the brewery except four team tracks in the yards contiguous to the bottling department at Ninth and Dorcas. As bearing upon the accessibility by the public to these various departments, it may be explained that the tracks in the open yard of the bottling department—that is, on the Ninth and Dorcas streets sides —are inclosed by an iron fence, on which are displayed "No Thoroughfare" signs, and that the four public team tracks in this yard, referred to, end on the edge of an embankment supported by a concrete wall built up from Ninth street, which is some 10 or 12 feet below, and topped with an iron fence; that the tracks at the Thirteenth street side of this department are ended some 10 or 15 feet below the street level by a stone wall and must therefore be reached by entries from other sides; that the team tracks in the Budweiser yard at Ninth and Pestalozzi are inclosed by a high iron fence with swinging gates; and, likewise, that the 25 or more ladder tracks in the yards of the keg department beginning at Second and Pestalozzi and running west to Broadway, are ended some 25 feet below the level of Broadway by an embankment which is reenforced by a concrete or stone wall topped with an iron fence. As access to the latter department from the Broadway side is thus absolutely impracticable, entrance must be effected from Pestalozzi street or between buildings of the brewery on the Arsenal street side between Second and Broadway.

Although it thus appears that the tracks in these three yards, with the exception noted of the four team tracks in the bottling department at Ninth and Dorcas, are essential to the operation of the brewery, it is contended by the complainant railway that they, in common with all of the rails of the Manufacturers Railway, are available for the traffic of independent shippers as well as for the traffic of the brewery, and at the hearing it introduced in evidence bills of lading and expense bills which showed that shipments have

been handled to and from these yards. The defendant car-
74 riers contend, however, that while a car may be occasionally so handled the shipments of patrons other than the brewery can not be set and delivered on those tracks in any appreciable number, because of the extensive business of the brewery, and that those yards were never intended to be open to all shippers alike, pointing to the fact, in support of the latter contention, that the original lease under which these tracks are let by the brewery to the railway, as hereinbefore referred to, provided that such tracks were to be available for the general public only when the handling of outside shipments did not interfere with the conduct of the business of the brewery, of which the brewery was to be the sole judge. This lease, however, following the original hearing in this case, has been amended in this respect, and to-day contains no such limitations; but defendants still urge that this change, in view of the common ownership of the stock of the brewery and of the railway, is immaterial and merely formal in its effect.

It will be borne in mind that in addition to these three departments of the brewery, which furnish most of its traffic, it has other plants, shops, etc., at various other points between Lynch street south to Arsenal and First street west to Thirteenth, inclusive, which has been heretofore described as being the area embracing all of its buildings and plants.

It was to afford a connection principally between these three departments of the brewery and the trunk lines of St. Louis that the railway was originally constructed. Prior to its construction the traffic of the brewery was carted to and from the St. Louis, Iron Mountain & Southern Railway at a point east of First street on the river front. Extensive yards and team tracks of the Iron Mountain parallel the river on its bank a short distance east of First street the entire length of this section of St. Louis. The first main stem of the railway was constructed from the Budweiser department of the brewery at Ninth and Pestalozzi, east along Pestalozzi to a connection with the Iron Mountain on the river front east of First street near Arsenal, and it is from this line at about Second street that the extensive yards are projected into the keg department between Second and Broadway. Subsequently a line was built from the bottling department at Thirteenth and Dorcas east along Dorcas street to First, thence one square south to the connection previously made near First and Arsenal between the Iron Mountain and the Pestalozzi street line. Prior to 1908 these two were the only connections which the railway had with any carrier in St. Louis. In that year it constructed a viaduct from First and Pestalozzi streets east along Pestalozzi toward the river, over the intervening tracks of the Iron Moun-
tain on the river bank, which after clearing those tracks
75 curves north to a parallel with them and gradually descends to their level. The Dorcas and Pestalozzi street lines are connected by a crossover from Lynch and Dorcas to Second and Pestalozzi, the lines so merged continuing east on Pestalozzi over the viaduct to point of interchange some distance beyond the foot of the viaduct with the St. Louis Transfer Railway, whose tracks parallel

those of the Iron Mountain nearer the river and the connection with which was the purpose for which the viaduct was built. East and south of this viaduct are extensive classification yards of the railway. The St. Louis Transfer Railway connects with the Wiggins Ferry Company a short distance north of this point of interchange, and the Wiggins Ferry Company delivers to the East St. Louis Connecting Railway on the other side of the river. The other two terminal carriers last named are owned or controlled by the Wiggins Ferry Company and the latter in turn is owned or controlled by certain of the trunk lines entering St. Louis. Practically all of the terminal and belt railways on each side of the river and the bridges or ferries connecting them are owned or controlled by the fourteen trunk lines entering St. Louis, through the medium of the Terminal Railroad Association of St. Louis, the stock of which they own in equal shares. Other lines not included within the fourteen which use these facilities on the same basis as do the proprietary lines under some mutual arrangement as to compensation are spoken of in the record as tenant lines. Therefore, although the Wiggins Ferry Company is not owned or controlled by the Terminal Railroad Association of St. Louis as a separate corporation, it is owned or controlled by certain of the proprietary or tenant lines embraced within that association and is in practical effect a part of its terminal facilities. The only individual trunk line which owns its separate terminals on each side of the river and the necessary connecting car ferry between them is the Iron Mountain, and these facilities of that carrier are in addition to its one-fourteenth interest in the terminal association, of which it is one of the proprietary lines. It will thus be seen that on traffic to and from the east the trunk lines entering St. Louis are dependent upon the facilities afforded either by the terminal association or by its proprietary or tenant lines, and that the railway is dependent upon one or the other of those facilities as an inlet and outlet to all of its traffic.

The two main stems of the railway along Dorcas and Pestalozzi streets described in addition to serving the brewery project some half a dozen side tracks to private industries, as well as a few public team tracks, and, as stated, shipments also are handled on the tracks within the partially inclosed yards of the bottling, Budweiser, and keg departments, for independent patrons of the railway as well as for the brewery. These two lines extend, as explained, east along the streets mentioned toward the river and except for these few pri-
76 vate sidings and public team tracks are essential to the operation of the brewery. But there is yet a third main track along Second street, crossing these two lines at right angles, which is not essential to the operation of the brewery but is given over practically wholly to the business of shippers who have no interest in either the railway or the brewery. On this Second street line south of Arsenal street, which is the southern boundary of the zone of brewery buildings, there is one private spur, and on that line north of Lynch street, the northern boundary of that zone, there are some 10 or 12 private sidings, team tracks, and yards combined. The Second street line has no point of direct connection with either the Dorcas or Pestalozzi street lines, it being necessary on inbound shipments, using them as

illustrative, after clearing the viaduct on Pestalozzi street near First, to shunt them south to a point near Arsenal street east of First, thence back north along First, thence east on Dorcas, and finally north on Second street to a point north of Lynch.

The total length of the railway is about 25 miles, 2¼ miles of which are represented by the three main stems described and the remainder by private spurs, team tracks, and yards, of which the trackage within the bottling, Budweiser, and keg departments and its extensive classification yards east of the viaduct on the river front constitute the greater part. About 9 miles are said by complainants to be really essential to the operation of the brewery. The railway has four engines but no cars of its own, the cars used on traffic which it originates being refrigerator cars furnished principally by the St. Louis Refrigerator Car Company, a substantial portion of the stock of which is owned by certain members of the Busch family. The railway does not handle less-than-carload freight and has no passenger business. Approximately 85 per cent of the total business within the zone of the brewery's buildings described is handled for the brewery, and, as stated, practically all of that by the Second street line for shippers having no connection with the brewery. Taking the railway as a whole about 76 per cent of the total business of 55,000 cars annually (based on the first eight months of 1912) is handled for the brewery.

From 1888 to 1908, during which time before the construction of its viaduct, referred to, its only points of interchange were with the Iron Mountain, the railway was operated by the Iron Mountain under a lease of its tracks under which it received from the Iron Mountain or other trunk lines from $3.50 to $5.50 per car on all of its shipments received from or delivered to them, including the shipments of the brewery as well as of the independent shippers on its rails.

77 Upon the expiration of the second of these 10-year leases in the latter year, the railway refused to renew the lease agreement, and shortly thereafter proceeded to operate the property itself, the reason assigned by it for this action being the allegedly poor service of the Iron Mountain. It appears, however, that there was a second and important, if not the controlling, consideration which entered into that decision, and that was the plan conceived by the younger Mr. Busch, one of its principal stockholders, to extend the line of the railway in St. Louis, to construct a new terminal line 7 miles in length in East St. Louis, and to connect the two by means of an additional bridge which was then in the contemplation of the municipal authorities. The trunk lines continued to make these absorptions to the railway until in the latter part of the year 1909, when, following the announcement through the press of St. Louis of the definite plan with respect to the extension of the railway system, they gave notice of their intention to cancel all allowances, not only to the railway, but to the 12 industrial lines referred to, and all these allowances were accordingly canceled, effective March 1, 1910, as explained. Following the partial decision of the Commission in this case most of the trunk lines have reinstated the allowances to the railway, and at least one of the other 12 lines referred to whose allow-

ances were also canceled, and those allowances are being paid to-day. Defendants, however, are asking that we review the case as if the allowances had not been restored to the railway and we shall proceed with this report upon that assumed basis.

Apparently the theory upon which this complaint is brought is that the cancellation of these allowances to the railway was in effect the cancellation of joint rates between the trunk lines and the railway, the effect of which, as alleged in the petition, results "to the great loss and damage of said complainants and others similarly situated, and that such action constitutes an unjust and unlawful discrimination as between the industries and shippers located upon, along, or near the lines of railroad of said Manufacturers Railway Company and other industries and shippers in said city of St. Louis, state of Missouri, and subjects complainants and all other industries, persons, companies, firms, and corporations shipping or desiring to ship goods or merchandise over the lines of said Manufacturers Railway Company and thence over said other lines," and also subjects the "locality in which the lines of railway of said Manufacturers Railway Company are located and the particular description of traffic so shipped over the lines of said Manufacturers Railway Company, and thence over said other lines of railway, to undue and unreasonable prejudices and disadvantages, and gives undue and unreasonable preferences and advantages to other industries, persons, companies, firms, corporations, and localities and to the particular description of traffic shipped by such other industries, persons, companies,
78 firms, and corporations and to such other localities contrary to and in violation of the terms and provisions of section 3 of said act to regulate commerce." The prayer of the petition is that "an order be made commanding the defendants and each of them to establish, or reestablish, through routes and through or joint rates over their lines and the lines of the complainant, Manufacturers Railway Company, as the same existed prior to the first day of March, 1910, and to cease and desist from longer refusing to establish or reestablish said through routes and said through or joint rates, and that it be determined herein what shall be the proper and reasonable division of said through or joint rates for the transportation of such goods and merchandise over the lines of the railroad of said complainant, Manufacturers Railway Company, and each of said defendants,, and that the defendants be ordered and required to establish or reestablish and maintain for the period of two years from the date of the order herein the said through routes and through or joint rates as the same existed prior to said first day of March, 1910, and that due reparation be awarded to said complainants and each of them, and for such other and further order or relief as the Commission may deem necessary in the premises."

There is evidently much confusion in the minds of complainants as to the true character of these allowances and the services for which rendered. Sometimes, for competitive or other reasons, a trunk line will absorb the charge of a connecting terminal line for gathering freight originating on the latter to the rails of the trunk line. Manifestly such service of the terminal line is one performed for the

trunk line and not for the shipper, and should be paid for by the trunk line and not by the shipper. While the trunk line may thus make such absorptions voluntarily, we have not had cited to us and are not ourselves familiar with any principle of law under which the Commission could compel the trunk line thus to bear not only the expense of the service of a connecting terminal line, but the reasonable profit in addition which presumably will be included in the terminal carrier's rate. We are speaking now of a terminal line which is in all respects a carrier subject to the act.

Similarly, allowances are frequently made by the trunk line to an industry under section 15 of the act for services rendered by an industrial line owned by it or its stockholders, as for an instrumentality furnished by the shipper, the only concern of the Commission in such case being to satisfy itself that the allowances are not above the reasonable cost of the service and therefore are not indirectly a rebate of a part of the trunk line's charge to the owning industry through the medium of the latter's industrial railway. These allowances also are voluntarily made as for services performed by the shipper
79 for the trunk line and it is not settled law that we can require them to be made by the trunk line any more than we can require the latter to absorb the published rate of the terminal carrier subject to the act, referred to.

Frequently the industrial line develops new traffic, and shippers other than the owning industry locate on its rails, whereupon the owning industry or its stockholders separately incorporate the railway, which thereupon files tariffs with the Commission, claims thenceforth to be wholly separate and distinct from the owning industry, and thereafter holds itself out to serve the owning industry and its other shippers impartially. Assuming the newly made carrier to be under the law a common carrier in all respects such as it represents itself to be, it is evident that allowances under section 15 of the act can no longer be made to the owning industry as for services rendered by the shipper, as the railway is no longer a part of or in law connected with the latter which is "the owner of property transported," to whom alone, under that section of the statutes, allowances may be made, but is in the contemplation of the act in the same position as it would be if it had been constructed and was being operated by parties having no interest whatever in the owning industry. Conversely the owning industry would be on the same plane as if it had located as an independent shipper upon the newly made railway after the latter's construction by parties having no connection with the industry. The railway is now a public agency which, if it lives up to the obligations attached by the act to its own representations, should collect its charges from the former owning industry the same as it does from other shippers on its line. On local shipments this complete separation of carrier from shipper usually is not only maintained with respect to the owning industry as well as the independent shipper, but what is more pertinent to the specific point we are coming to is that, there being no third party in the form of a connecting trunk line involved in the transaction, both the owning industry and the independent shipper must recognize this local service as being

performed for them as shippers for which they are expected to pay and that it is to them that the carrier must look for its rate. If therefore, this sevice is recognized as being performed for them on local shipments, by what process of reasoning can it be transformed into one performed for the trunk line when rendered as a part of a through haul for the same shipper? Yet this in effect must necessarily be the contention of such a complainant railway and its shippers when the trunk line, owing perhaps to the absence of the same competitive conditions as existed with reference to the terminal line or the industry with its industrial line, referred to, or for other reasons, is not disposed to ask the complainant railway to
80 render it that service and to absorb the latter's charge therefor, and they petition this Commission for the establishment of joint rates which shall not exceed the rate of the trunk line. Such a course can not and should not be required by this Commission. In the contemplation of the act what the Commission in such a case is really asked to do is not to make the trunk line absorb the other's charge, but is instead to take the two separate local rates of the two separate carriers for the two separate services, both rendered for the shipper, and to combine them into one rate commensurate with the value of the through service which in its entirety and in its constituent parts also is rendered for the shipper. We are not to be understood as saying that when carriers in the through route under their tariffs absorb the switching charge of a terminal line, the resulting rates are not to all intents and purposes, and in fact, joint rates so far as concerns the shipping public. What we do say is that while the trunk lines may thus voluntarily establish such rates on that basis, we would not be justified in requiring them to do so.

There is, therefore, we think, in legal effect a well-defined distinction between an absorption which may be made by a trunk line voluntarily and the division of the joint rate which may by lawful order be prescribed by this Commission. This being so, it follows that there is also in legal contemplation a well-defined distinction between the character of the services rendered by the railway under the absorption tariffs of the trunk lines formerly in effect and the same services under the joint rate which could by lawful order be prescribed by this Commission. In the absence of an undue discrimination with respect to such absorptions the Commission could make no lawful order that they be made, and its order even in case of such discrimination would probably be in the alternative to absorb the charge of the railway or to cease absorbing similar terminal charges under like conditions. If there is shown no such discrimination, the only question left for the Commission to consider is the establishment of a joint rate between the railway and the trunk lines, and assuming the rate of the latter to be reasonable in itself such joint rate must necessarily be higher than that rate by the amount of the through charge accruing to the railway. Therefore, in the final analysis there are before the Commission in this case the two questions, (1) whether there is an undue dicrimination against the shippers on the railway by reason of the absorption by

the trunk lines of the charges of other terminal carriers in St. Louis under like conditions, and (2) if there is no such discrimination, should the Commission establish joint rates, and, if so, upon what basis?

The allegation of undue discrimination is based primarily upon the practice of the trunk lines of absorbing the charge of
81 $3 per car assessed by the Terminal Railroad Association against them for passing over its terminals and of their absorbing each other's switching charges under the reciprocal arrangements existing between them as members of that association. It was to enable them to enter St. Louis and to furnish these reciprocal advantages and to afford a uniform rate to all shippers upon their lines in St. Louis that the trunk lines formed the terminal association, and the relative advantages afforded by these facilities and the relative necessity to the trunk lines of acquiring them should, we think, be given due consideration in the determination of whether the trunk lines unduly discriminate against shippers on the railway in refusing to absorb its charge while contemporaneously absorbing the charge of the former. Delivery of freight is made at the St. Louis rate on the rails of the St. Louis Transfer Railway, which as stated is owned by certain of the proprietary lines of the terminal association through the Wiggins Ferry Company, and on the rails of the Iron Mountain, one of the proprietary lines of the terminal association, within two or three blocks of the whole length of the Second street line of the railway, and in addition the rails of the Iron Mountain extend west to and across the northern end of the Second street line of the railway and in a few instances serve even the same industries by direct spur tracks. In addition to these deliveries in this section of St. Louis on what are in fact their own rails, with attendant reciprocal advantages to them, the trunk lines are sought to be required by this Commission's order to go a step further and bear the expense of the delivery on the rails of a separate and independent terminal connection which is not in position to render such reciprocal services and which, by its own statement, is endeavoring to construct an extensive terminal system to rival the trunk lines' own facilities as represented in the terminal association. That the railway is the only terminal line in St. Louis doing a terminal business exclusively, and that it in that respect differs from the lines embraced within the terminal association is conceded by its president in his testimony in support of complainants' contentions as to the reasonableness of the amount of the allowances demanded by them.

I consider this $4.50 per car more defensible than a scaled rate for terminal switching, because it is less open to criticism. The difference in the element of loss on account of high-class freight and low-class freight in terminal switching is very small. We can afford to handle a car of pianos about as cheaply as we can afford to handle a carload of coal. Primarily, service rendered by the Manufacturers Railway is a switching and terminal carload service. The Manufacturers Railway Company is the only terminal company doing an exclusive terminal and switching service in St. Louis. If you

consider all of the constituent lines of the Terminal Railway Association as one company, then it and all other lines have either a cross-river haul or road haul in connection with what switching service they may render and, in addition to that, some passenger service, so that when you try to measure
82 the reasonableness of our rates with the rates of other carriers in St. Louis the parallel is not an exact one, for the reason that our entire revenue is derived from a switching service and these other lines supplement their revenue with other service and parallel comparison can not be made. They have rates in effect that are not remunerative in and of themselves. So has the Manufacturers Railway. It is necessary sometimes to use certain of your property at a loss in order to encourage the growth of the business. In some cases you are forced to do so on account of competition. In other cases you are forced to do so because your rates are fixed by ordinance. Our object is to have our entire schedule return a profit.

In this connection it may be argued by complainant that the terminal association is a separate corporation from the trunk lines. This is true. But it is also true that intermingled with the lines controlled by it as a separate corporation are included in the same reciprocal arrangement certain terminal lines owned or controlled by its proprietary or tenant lines direct, as is the Wiggins Ferry Company, as well as the various terminal properties of the individual trunk lines themselves, all of which together constitute the united terminals of all the trunk lines entering the city. There is therefore here presented a different situation from that which would be presented if we had under consideration two or more independent terminal systems in St. Louis, and the trunk lines absorbing the charge of one or some of them and refusing contemporaneously to absorb the charge of the others under like conditions, for, as previously stated in the report, simultaneously with the cancellation by the trunk lines of the allowances to the railway they also canceled similar allowances to twelve other independent terminal lines, industrial or otherwise, with which they claim the railway should be included.

We have carefully considered the evidence as presented by the combined record and, considering all the facts, circumstances, and conditions as now appearing, it is our conclusion, and we so find, that the railway is a common carrier subject to the act, as held in the previous report; that the payments formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered to the trunk lines and were in no sense divisions of joint rates as for services rendered for the shippers served by the railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expense of similar delivery by the railway upon the rails of that carrier are not subjecting the

shippers located on and served by the railway to undue prejudice and disadvantage; that therefore the only lawful order the Commission can make is in the establishment of joint rates if the conditions are such as to warrant that action; that under joint
83 rates so prescribed that part of the service performed by the railway would be in the contemplation of the act a service performed for the shipper to be paid for by the shipper and could not be construed by the Commission to be a service rendered for the trunk lines, the expense of which could be required by the Commission's order to be borne by the trunk lines; that the rates of the trunk lines not being shown to be unreasonable in themselves, such joint rates with the railway must therefore necessarily be in excess of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis.

We understand there has never been any question of through routes in this case even during the interim in which these allowances were not paid. Therefore the only remaining question is as to the amount to be added to the rate of the trunk lines in making the joint rates. The present alowances are, as stated, from $3.50 to $5.50 per car. Complainants now ask for a uniform allowance of $4.50 per car, which is said on the average to be lower. The rate of the railway for local shipments between any points on its line is $2 per car, fixed as a maximum by city ordinance; for intraplant movements which can be availed of only by the brewery as the only industry having need for such services, $1 per car; and for weighing movements, 25 cents per car. The railway has a contract with the St. Louis Southwestern Railway under which it handles shipments for the latter under certain exemptions from liability for damage for $1 per car, and it has offered the same contract to certain other carriers.

A considerable volume of testimony has been submitted on this phase of the case, including a comprehensive analysis of the physical assets and accounts of complainant railway. This part of the record has been given careful consideration, from which we are of the opinion that the division of the joint rates accruing to the railway should not exceed $2 per car. However, we shall not by definite finding and order fix these divisions now. This is our original finding with respect to the establishment of joint rates, and the carriers, in accordance with the provisions of the act, will be given an opportunity to agree among themselves. If they can not agree upon this basis the Commission will make such further investigation as may be necessary to make a definite finding and order in this respect. It will be understood that in the establishment of joint rates under these findings no part of the division thereof accruing to the railway will be borne by the trunk lines. Its part of the rate will be paid by the shipper, including the brewery on the same plane as the independent shipper, and will be in addi-
84 tion to the trunk lines' rates to St. Louis. The latter will retain their full rates to St. Louis.

Once give effect to the foregoing distinction between absorptions

and divisions and establish and maintain joint rates on that basis and it becomes immaterial whether the stock of the railway and that of the brewery are in common or independent ownership, as then there can be no suggestion of possible rebate to the brewery through the railway, inasmuch as the railway's part of the through transportation being performed not for the trunk line but for the shipper, will be paid for not by the trunk line but by the brewery as a shipper. Then also, and in accordance with complainant's own contentions, there need be and can be no distinction between the brewery and the other shippers on the line of the railway, because, the brewery being, as claimed both by itself and by the railway, wholly independent of the railway, it will be lumped together with the other shippers, all of whom will not only pay indiscriminately the local rate of the railway, as they do now, but will also pay indiscriminately the division accruing to the railway out of the through rate because it, as well as the latter's local rate, is payment for services rendered by the railway for them as shippers and not for the trunk line as a carrier.

Only in this respect of closer scrutiny and regulation of the divisions does the present case in any way differ from the case that would have been presented had the railway not been built by the brewery and the stock of both been subsequently placed in common ownership, as otherwise it would be immaterial what arrangements as to divisions could be made by it with the trunk lines. Complainant railway itself concedes that this question of the amount of the allowance to the railway, but not the question of whether a reasonable allowance should be made, is a matter for closer investigation owing to the common ownership of the stock of the railway and of the brewery, its statement in this respect, however, being based of course upon the understanding that the allowance was to come from the trunk lines. Therefore, regardless of its insistence that the railway and the brewery are separate and distinct in law and in fact, it nevertheless apparently recognizes still, to that extent, a certain relationship between the two and the necessity for the exercise of caution in payments by the trunk lines to the railway. That the separation, in fact, of the railway from the brewery seems even yet not to have been clearly effected in the minds of the complainant would seem to be further shown by the fact that the railway, as one of the complainants, is claiming reparation on the shipments that moved in the interim during which the allowances were not paid and is carrying the claim in its accounts. Upon what theory it as a common carrier can at the same time be a shipper or as a common carrier can claim reparation from another common carrier we are not advised. Neither are we definitely advised whether the brewing
85 association as a shipper and the independent shippers on its line intend to make similar claims. It is manifest that any claim for reparation must come from the shipper who pays the rate and that the order must run against each carrier in the route, one of which is the railway. We can conceive of no circumstances under which this Commission could award reparation against the trunk lines to the Manufacturers Railway as a common carrier. Even in case of joint rates a failure by the trunk lines to abide by a subse-

quent order of the Commission fixing divisions would be punishable by proceedings for penalties and forfeitures imposed by the act for disobedience of the Commission's orders and would not afford the basis for a claim by the railway for reparation, an award of which under the act is due only from a carrier to a shipper and not to one carrier, as a carrier, from another.

This same apparent recognition by complainants of a present relationship between the railway and the brewery is still further evidenced by the allegation in the petition that the said "complainants further allege that the said Manufacturers Railway Company as to material purchased by it and which is transported to said city of St. Louis over the lines of any of said defendants, and as to the goods and merchandise transported for any or all industries, persons, companies, firms, or corporations located upon or along the lines of said Manufacturers Railway Company over its said lines and over the lines of any of said defendants, renders a service connected with such transportation and furnishes instrumentalities used therein, for which service and instrumentalities so rendered or furnished the said Manufacturers Railway Company is entitled to a just and reasonable charge and allowance to be paid by the said defendant or defendants for which the service is rendered or said instrumentality furnished, as provided in section 15 of said act to regulate commerce." Allowances under this section of the act can be made only to the "owner of property transported," which in this case, by the railway's own contentions, is either the brewery or the independent shippers located on the railway. However, in spite of these inconsistencies and the apparent lack of certainty in its own contentions, we are convinced, as stated, that the railway is a common carrier under the act and should be regulated as such.

We should not confuse the nature of this proceeding. This is not a case in which there is a blanket rate over a wide territory, such as in the lumber tap-line cases, and in which the trunk lines are willing to make absorptions or divisions out of their own rates and the only duty of the Commission is to see to it that such payments by the trunk lines are not overdone and in effect rebates to the industry through the railway. Neither is it a case as presented by this
86 record in which the trunk lines are willing to make allowances to the brewery as a shipper, through the railway, which they claim to be a plant facility, under section 15 of the act, and as to which that same one duty of the Commission attaches. It is on the contrary one in which the trunk lines are, on this record at least, resisting the demands of a connecting common carrier and its shippers for an order that would materially diminish their revenues and in which the Commission is asked to make an affirmative order which would have that effect. It is manifest that we can not consistently or lawfully do this. What the trunk lines did for years voluntarily in the matter of absorptions affords no basis for our order in continuance of the practice if they could not have been required by our order to make such absorptions originally. Neither can the fact of their previous voluntary absorptions change the true character of the present proceeding, either under those allegations of the

petition which deal with the establishment of joint rates, or under the provisions of the act relating thereto, by which particular provisions alone we have jurisdiction to make any order in the case.

It is unnecessary in this proceeding to discuss in detail the Terminal Railroad Association of St. Louis or, otherwise than to state it, to indulge in comment upon complainants' contention that the trunk lines of St. Louis, instead of the owners of the railway, and its shippers for whom its services are rendered, should be compelled to develop this carrier into a formidable independent terminal system to rival their own, which apparently is to be inferred from the following extract from complainants' brief:

The testimony of Mr. Pitzman (above quoted), concerning the rental, shows that even though Adolphus Busch does, through stock ownership, control both the railway and the Anheuser Busch brewery, he has certainly not used that control to exact any unfair or undue advantage from the railway as lessee, for the brewery as lessor.

On the contrary, we respectfully submit that no one can read the record in this case without reaching the conclusion that his well-known broad public spirit has caused him to make every possible effort to keep his promise to the city of St. Louis and to the shippers of South St. Louis that he would try to create and operate, independently of the so-called "terminal" monopoly, a separate common carrier to render a terminal and switching service to South St. Louis.

It is obvious that unless the Commission permits the Manufacturers Railway Company to receive allowances and divisions on all of its interchange business and at rates which will enable this carrier to live and make a reasonable profit for its proprietors, that promise can not be kept, and Mr. Busch will be forced to part with his railway and abandon his efforts to aid and protect the shipping public of South St. Louis. That he could do this at large profit to himself is clear from the record. That by doing so, and thus terminating the fact of common ownership, his brewery could and would continue to do its spur and yard track shipping at the St. Louis rates is conceded by the defending Louisville & Nashville, so that neither

87 Mr. Busch's personal nor the brewing association's interests would be prejudiced by such a change, except to the extent that the quality or grade of the new service might be worse than that of the service now rendered by the Manufacturers Railway.

So, it is apparent that it is not any danger or fear of financial loss that prompts Mr. Busch to engage in this expensive and protracted litigation with the defendant carriers, but it is his desire that the shipping public of South St. Louis, and his own industries among them, may have and retain the undoubted benefits which they have ratably shared in common through the extensions and operations of the Manufacturers Railway Company.

It is equally unnecessary and inappropriate to discuss the question whether the Terminal Railroad Association of St. Louis is a monopoly in violation of the Sherman antitrust law, as the determination of that question is quite apart from this proceeding and is not controlling of the issues before this Commission.

We have found that there is no undue discrimination against shippers located on or served by the railway chargeable to the trunk lines by reason of their cancellation of these allowances, and that in the absence of such undue discrimination the Commission can make no order in reference thereto, and therefore that the only order that can be made by the Commission is in the establishment of joint rates between the railway and the trunk line carriers. In the latter connection we may remark that the length of a carrier's rails does not change the principle underlying the establishment of such rates. Under these circumstances the true character of the case now before the Commission and of the principle underlying it with respect to the establishment of joint rates by our order will be apparent if, for illustration, we substitute for the railway a common carrier from St. Louis to a point, say, 25 miles beyond that city, and to-morrow locate its industries, all of which are in ownership wholly independent of the railway; or if, in similar illustration, we assume the construction to-day of the railway anew, with its present 2¼ miles of main track and its 22½ miles of branches and sidings, and to-morrow locate its present industries, all of which, including the brewery, are in ownership wholly independent of the railway. The latter in the contemplation of the fifteenth section of the act is the situation presented by complainants in this case.

As heretofore shown the prayer of the petition is for the establishment or reestablishment of "through routes and through or joint rates as the same existed prior to March 1, 1910," which means the establishment or reestablishment of the St. Louis rate with the previous absorptions. It is apparent from the foregoing findings that the prayer of the petition can not be upheld to that extent.

In view of the nature of this case it has seemed to be necessary and proper under the pleadings clearly to define by express findings not only the legal rights, but as well the legal duties, of all parties of record, including the railway as a common carrier. One
88 of the duties of the latter is that it participate with the trunk lines in joint rates, and we have indicated what, in our opinion, is the proper basis of such rates. We assume, owing to its desire to keep open the through routes heretofore in existence, that as to it no order in establishment of joint rates will be necessary. We also have no doubt that the trunk lines, in view of our findings with respect to the basis on which they may be required to participate therein, will likewise voluntarily establish and maintain these joint rates. We shall therefore enter no order at this time, but shall hold the case open for 60 days from the date of service of this report, within which period we shall expect the trunk lines and the railway to establish joint rates in accordance with these findings. If this is not done we shall proceed to the making of a definite order in that respect.

We have, in other words, dealt with this case as presented by the pleadings and at the hearings, upon the understanding that the trunk lines are resisting the demands of the railway and its shippers and in accordance with what we conceive to be our duty and limitations in the making of joint rates by affirmative order. That order,

if made, would merely prescribe the maximum rates. Should one or more of the trunk lines attempt to pay to the railway the $2 per car which we suggest herein as being in our opinion reasonable for the latter's shippers to pay for its service, another question would be presented in which would figure the fact, much discussed in the record, of the common ownership of the stock of the railway and of the brewery. That question would not arise primarily under section 15 of the act, but under those sections which seek to prohibit the giving of unlawful concessions by any device whatsoever.

It follows from what we have said herein that we regard the present allowances which, as stated, average slightly above $4.50 per car, as effecting unlawful results. We should also regard in the same light any effort on the part of the trunk lines to accomplish these results by shrinkage of their St. Louis rates or by means of per diem or demurrage agreements or practices, or otherwise.

HARLAN, *Commissioner,* concurring:

The immediate result of the findings and report of the Commission in this case will be to put an end to the unlawful concessions out of the rates that have been made to the Anheuser-Busch Brewing Association for several years by the carriers serving St. Louis. To that extent I fully approve the action of the Commission. I also concur in much that is said in the report of the Commission. I concur particularly in the very important principle to be gathered from the report, namely, that the incorporation by an industry of a railroad company to operate its plant tracks and locomotives does not, as a matter of right, entitle the incorporated company to
89 divisions out of the rates of the trunk line carriers, and does not, as a matter of right, give the carriers a legal basis for relieving the industry, in whole or in part, of the cost of operating that part of its plant facilities by assuming the burden themselves and paying for it out of their rates. As I understand the report of the Commission, it holds on the facts shown of record that the extension of the St. Louis rates to and from all points within the plant of the brewing association is unlawful, and that the divisions or allowances so paid to its industrial railroad out of the rates are as unlawful as they would be if paid by the carriers directly to the association. In other words, the Commission, looking through the merely technical legal structure by which the practice has been enveloped and surrounded, finds that unlawful concessions grow out of this rate arrangement of the carriers with the brewing association and its industrial railroad. The Commission, therefore, by its report and findings has stopped the St. Louis rates at the point of interchange between the carriers and the industrial road, and holds that any service by the Manufacturers' Railway for the association beyond that point must be regarded as an additional service for the association for which it must pay, and not as a service for the trunk lines for which they must or lawfully may pay out of their rates.

There is thus brought to an end an unlawful practice that has continued through several years and an unlawful preference to a large and favored shipper that has been enjoyed by it in violation of law.

The situation is now restored to a lawful and nondiscriminatory basis. So far therefore as the result in the particular case is concerned, it is unnecessary to add anything to what is said on the report of the Commission; the report cuts off the tail of the animal just behind the ears, and in the presence of an operation so complete the form of the instrument used is ordinarily not a matter of any consequence. Nevertheless, in view of the importance of the question and its application to a multitude of similar cases, I venture in this way, and as briefly as possible, to state my own views with respect to certain phases of the problem as they are illustrated on the record before us.

Starting in a relatively small way, the business conducted under the name of the Anheuser-Busch Brewing Association has grown to very large proportions. Its grain houses, malt houses, warehouses, brewing houses, rice houses, bottling works, repair shops, stables, etc., that make up the brewery plant, cover 35 or 40 city blocks. A more accurate impression of the extent of the industry may be had from the statement that it embraces 126 acres of ground, all closely covered with structures of one kind or another, in which the various processes in the manufacture and marketing of beer and related products are carried on. Some of these structures are individually as large as many factories.

For a number of years following the inception of the enterprise the inbound raw materials and the outbound products of the brewery were drawn by horse and wagon to and from the tracks of the Iron Mountain at a point on the river front near First street. But the plant is situated on the hills of South St. Louis and the grade of the streets is such as to make it difficult and expensive to dray traffic in large volume to and from the rails of the carriers. With the growth of the industry the use and maintenance of the horses and wagons therefore became a large item in the manufacturing cost, and, as in the case of many large industries elsewhere, it was found essential in 1885 to abandon that means of doing the work and to substitute a plant railway in order more economically to move the increasing tonnage of the plant to and from the tracks of the carriers. The record makes it perfectly clear that this substitution of one form for another of doing the same thing was brought about in the interest of the industry and not in any degree in the interest of the shipping public; it is practically conceded on the record that substantially all the tracks except the one in Second street were laid for the brewery and for it alone.

The rails that were installed by the industry to take the place of the horses and wagons run into and between the various buildings and through the narrow passageways that separate them, as is clearly described on the report of the Commission. In some cases they are inclosed between the walls of these buildings and in other cases by fences or walls surrounding open places adjacent to the buildings. Rails and locomotives have become a part of the ordinary plant equipment of large manufacturing concerns, and so large an enterprise as the one here before us could not be conducted economically without these modern aids and appliances. The necessity of giving up the

effort to move the inbound and outbound traffic of the brewery in the old way will at once be appreciated when it is stated that its tonnage aggregates annually one-thirtieth of the entire traffic of the city of St. Louis. A still clearer conception of the saving effected by the substitution of motive power and rails for horses and trucks, and of the impossibility, physically and economically, of continuing to do the work with horses and trucks may be gathered from the statement of record that some 40,000 loaded cars, or about 130 cars for each working day, were thus handled by the brewing association within its plant during the year preceding the original hearing. In addition there were about 35 interworks-switching movements each day, or some 10,000 for that year. These figures are based on the
91 brewing association's own classification of the traffic of that year; the additional testimony taken since that time shows that its traffic and interworks switching have substantially increased.

With the growth of the industry the number and length of the tracks have been increased, and at this time the rails spread out like a fan through the entire plant from one general main connection with the Iron Mountain. But of the 25 miles of track now claimed by the industrial railroad all but 2½ miles lie within what would be the plant inclosure of the brewing company if it were surrounded by a fence, as is the case with many such manufacturing operations. The property is intersected, however, by streets which can not be fenced off. The whole plant is compactly built, the various buildings being so constructed and located in their relation to one another as to result in the highest type of plant efficiency, and so placed as to give the effect of a plant inclosure.

The tracks within the plant can not from any point of view be said to form any real part of the public transportation facilities of the city of St. Louis. Practically all of them are used exclusively for the brewery, and there is no pretense that any substantial use is or could reasonably be made of them by the general public. Moreover, the public is not encouraged to use these tracks and is not expected to use them. It is said that the industrial railroad has four team tracks in the yards adjoining the brewery's bottling department; but these yards, as stated in the report of the Commission, are inclosed on one side by an iron fence carrying "No Thoroughfare" signs, and the tracks are at the edge of an embankment supported by a concrete wall built up from the street, the latter being about 12 feet below the level of the tracks. The record shows that the public makes no real use of these tracks, and their relation to the industry would still remain that of a plant facility even if substantial use were made of them by the public.

There are numerous other features in the situation that develop and emphasize the purely industrial character of this alleged railway and show that its incorporation was a mere device for securing unlawful allowances from the trunk lines. Some of these matters may be mentioned. For example, a large part of the tracks of the so-called railroad company are not owned by it at all, but are leased to it by the brewing association. The original lease provided that the tracks were to be available to the general public

only when such use of them did not interfere with the business of the brewery, and of this the brewery was to be the sole judge. After that clause had come under observation at the original hearing it was immediately eliminated by an amendment of the lease. This prompt readjustment of the paper relations between the two compan-
92 ies indicates an alert appreciation of the importance of agreements and forms of organization that have the appearance of being legally correct. The incident serves also to illustrate the identity of interest between the brewery and its industrial railroad, and how the policy of one is necessarily the policy of the other, and how completely the policies of both companies rest in one control. While that weak spot in the lease and in the duty of this alleged common carrier to the public has been corrected on paper, it would be mere folly to infer that the brewing association does not in practice still retain a preferred use of the tracks which it built for its own purposes.

Again, I have said that of the 25 miles of track which the Manufacturers' Railway claims to operate all but 2½ miles are within the plant inclosure. As a matter of fact, 4 or 5 miles of the trackage thus assigned to the plant make up what is called a storage or classification yard; this is of recent creation and is located between the river and the Iron Mountain rails. It is reached form the plant over a viaduct spanning the Iron Mountain tracks. It is true, as insisted of record, that this addition to the plant tracks was secured only as the result of a substantial expenditure of funds. It has been a valuable investment, however, to the association; and the investment was shrewdly made, for by this means the industry acquired a connection with all the lines serving St. Louis and was no longer dependent upon the Iron Mountain only. This outlet to the other lines is a mighty club in the hands of the brewing association and has already been used to beat the trunk lines into submission to its will. But this is not the only advantage accruing to the industry from the storage yard. The record shows that being the "home track" of the St. Louis Refrigerator Car Company, a Busch subsidiary concern, it enables the brewing association to escape demurrage charges that it might otherwise have to pay. This, however, is not of great importance, because demurrage so paid would be simply a transfer from one pocket to another of the controlling interest.

But there is another and a still more important demurrage feature in such cases that must be mentioned in order that we may have a full understanding of the very great advantage flowing to an industry when it has succeeded in compelling the trunk lines to deal with its plant railway as if it were a common carrier. Shippers pay demurrage, ordinarily $1 per day, to the carrier on the rails of which they detain a car beyond the lawfully established period for loading or unloading. With large industries the annual charges for demurrage often make a very considerable item in their transportation costs. But when these charges are paid directly into the treasury of their own incorporated railway company demurrage ceases to be a burden on their traffic and becomes a mere paper account.
93 This, however, is not all. According to a well-established practice, switching roads have a certain free period, during

which they may keep the cars of the line carriers on their rails without paying the usual per diem allowance; and as a reward for the expeditious handling of the equipment a switching road, returning a car in shorter time, receives a bonus from the line carrier of 45 cents a day. To use language familiar to the railroad world the switching road under such circumstances is entitled to a per diem "reclaim." In other words, to apply the practice to the case before us, the Manufacturers' Railway, besides enabling the brewing association to avoid demurrage charges amounting to many thousands of dollars a year, actually earns for the industry, out of the revenues of the carriers, many thousands of dollars a year through per diem reclaims. All this is in addition to the huge sum it annually receives through switching allowances out of the revenues of the carriers, as herein explained.

As already indicated, substantially no use is made of the tracks within the plant inclosure except by the brewing association. About 55,000 loaded cars are handled annually by the industrial line; but so small is the outside traffic over these tracks compared with the immense traffic of the brewery that it may be considered as practically negligible. A careful analysis of what appears of record and in our own files shows that from July 1, 1909, to November 30, 1911, not less than 85.06 per cent of the total traffic was for the account of the Anheuser-Busch Brewing Association; 3.16 per cent consisted of shipments to and from industries affiliated with the Busch interests; and of the remaining 11.78 per cent of the total carload movement 4.68 per cent was for outside industries located on lands owned by the brewing interests. This left but 7.10 per cent of the total traffic that was wholly outside and beyond the control or direct influence of the brewing interests. The spirit that has characterized the course of the brewing interests in making up this record is illustrated by the fact that much of the traffic shown on their exhibits as ouside traffic developed, upon further investigation, to be traffic that was billed either to the brewing association, its employees, or affiliated industries, or billed to outsiders by other companies under the control or direct influence of the Busch interests in one form or another. The small amount of tonnage that may be said to be outside traffic in a complete sense was billed to or from industries in Second street, many of which are reached by Iron Mountain spur tracks, but used the Manufacturers' Railway for reasons not developed on the record but which without undue strain may readily be inferred.

Attention has been drawn to the fact that, as a matter of manufacturing economy and as a plant necessity, rails and a locomotive were substituted for the horses and wagons that had previously been used for moving materials and products within the works and to and from the rails of the carriers. It is important that the results of this course to the industry should be fully understood. The record does not show how much it had cost the brewing association in previous years to use horses and wagons; but presumably it was a large item. It must not be inferred, however, that the brewing association, having substituted plant rails for its

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horses and wagons, now bears the cost of doing the work in this new form. It incorporated a railroad company and called it a common carrier. Thereupon, using its immense traffic as an instrument of persuasion, the brewing association forced the carriers to assume the cost of doing the work. It demanded and compelled the carriers to make its industrial railroad a switching allowance of from $3.50 to $5.50 a car. At this time the allowance averages about $4.50 a car. It amounts to from $225,000 to $520,000 a year. In other words, the labor and cost, which the ordinary shipper must bear, of getting his traffic to and from the rails of a common carrier, have in this manner been taken from the shoulders of the brewing association and laid upon the general public. The brewing association no longer bears the burden as it did when it used horses and wagons; by substituting rails and a plant locomotive and later turning them over to its incorporated railroad company and calling the latter a common carrier it has succeeded in relieving itself of the cost.

This relation between the trunk line carriers and the Anheuser-Busch Brewing Association is really nothing more or less than a shameless device to evade the law. The record makes it entirely clear, and on the report of the Commission it is expressly found, that practically all the tracks of the industrial railway company are essential to the operation of the brewery. The Manufacturers' Railway is therefore a common carrier for the brewing association only on paper and in form; in substance and in fact it is a plant facility, a necessary part of the plant equipment. No one knows this more fully than those in control of the brewing association. They laid these rails for the purposes of the brewery, and they incorporated the railroad company not in order to serve the public but simply as a basis for throwing upon the public the cost of doing the brewery's own work. The form of the device for accomplishing this was not, however, the invention of the brewing association. On the contrary, the Manufacturers' Railway is but one of a numerous company of industrial railroads that have been incorporated for the same purpose of forcing the carriers to relieve the controlling industry of this large item in the cost of manufacture and transferring the burden to the general shipping public. I state the case in that form because it must
95 not be supposed that the carriers, when permitting their revenues to be depleted in this manner, bear the loss themselves. Like other items that affect their net income, these contributions to favored industries through their industrial roads must necessarily be made good in some form, and sooner or later the losses are taken up and absorbed in the higher rates imposed on the general public. It is no exaggeration to say that the revenues lost and dissipated by carriers, in this and other similar unlawful preferences of favored shippers, amount to many millions of dollars a year. And yet, while their revenues are being so thrown away in millions, the public is now being asked by the carriers to submit to higher rates in order that they may have additional revenues. It seems entirely appropriate at this time to express the conviction that the enormous depletion of the revenues of carriers in the unlawful form illustrated on the record before us has a necessary and, in my judgment, a very

important bearing on the propriety of the additional rate burdens which the carriers are seeking to lay upon the general shipping public.

Throughout the country large enterprises have been compelled, for reasons of economy and efficiency, to abandon horses and wagons and to substitute rails and motive power for doing the same work. They are now incorporating so-called railroad companies and, on the pretense that their rails and locomotives form additional facilities for the general public, they are calling these plant railways common carriers. With a large traffic to move and route, these industries are forcing the trunk lines, through switching allowances or divisions out of the rates, to contribute to the cost of the operation of their plant railways. Having accomplished this they then commence to talk about "our railroad company," and to say that it is "not earning the cost of operation," and "ought to have higher divisions." They speak of it as a thing apart from the industry itself, when in every true sense it is but a mere plant facility, like the horses and wagons still used by smaller shippers. These so-called railroads file tariffs and go through the form of rendering annual reports and assert that they keep their accounts as required by our regulations. They demand and receive free passes, and their presidents and other officials go over the country in private cars without cost. All these unlawful privileges not only put the favored industries on a preferred-rate basis, but result in an enormous depletion of the revenues of the carriers which the general shipping public must make good. It remains for this Commission, in my judgment, to correct this growing evil before such special privileges become more firmly fixed than they now are as a definite burden upon the rates of the public and upon our transportation methods.

96 Entertaining these views on this very important question, I can readily concur in the results that must follow upon the findings and report of the Commission herein, for they will require the trunk line carriers at once withdraw the unlawful preferences now being enjoyed by the Anheuser-Busch Brewing Association. I differ with the Commission only in the status assigned by it to the Manufacturers' Railway as a common carrier. With respect to the brewing association, it is, in my judgment, simply a plant facility and its service a private service. I think also that we ought not to hesitate to define it as a plant facility. The fact that it is incorporated as a railroad company is not controlling. That is a mere device to make a part of its necessary plant equipment a source of unlawful income to it, and we ought not to hesitate to call it a device and to deal with it accordingly. The law forbids preferences by means of any device whatever. That is the central and most vital feature in all this legislation, and to enforce this principle we must follow as far as the ingenuity of those who are willing to evade the law in this way may lead us, not hesitating to denounce as a device any means, whatever its form, by which unlawful results are accomplished. Construing the phrase "by any device whatever," it is said in Armour Packing Co. v. United States, 209 U. S., 56, 71, 72—

the act seeks to reach all means and methods by which the unlawful preference of rebate, concession, or discrimination is offered, granted, given, or received; * * * the term includes anything which is a plan or contrivance.

How far shippers will go in this way to evade the law I have endeavored to point out elsewhere, 21 I. C. C., 304, 318 and 319, and will repeat here. In the immediate neighborhood of the Anheuser-Busch brewery is the brewery of the Lemp Brewing Company. Although relatively small when compared with the Busch brewery, it is nevertheless a large industry, its inbound and outbound traffic amounting to 10,000 to 12,000 carloads a year. This company also has abandoned the use of horses and wagons as a means of getting its traffic up and down the hill on which both breweries are situated. It has solved the difficulty by using a drum and cable, operated by a stationary engine sufficiently powerful for pulling cars up and letting them safely down the hill to and from the tracks of the regular carriers. As a matter of fact it does this to some extent for some of its neighbors. This contrivance, a few hundred yards in length, is no more a railroad than is the elevator which hoists coal in cars from a mine so that it can be dumped into the tipple; like the hoists the drum and cable are simply a part of the plant equipment of the Lemp brewery and take the place of the horses and wagons that others use. Nevertheless the contrivance has been incorporated as the Western Cable Railroad Company; and, when the car-
97 riers were forced to make these concessions out of their rates to the Anheuser-Busch Brewing Association, they felt it necessary as a matter of mere justice and equity to make similar concessions out of their rates to the Lemp Brewing Company; the allowances to it, through its "Western Cable Railroad Company," range from $1.50 to $3.50 a car. It would seem that ingenuity, in evading the wholesome principles of the law and in securing special advantages at the hands of carriers, could go no further than a drum and cable, and yet were the time available still more ingenious devices could be detailed. The Manufacturers' Railway and the Western Cable Railroad are, however, sufficiently illustrative of the means by which large industries unlawfully relieve themselves of burdens which they alone ought to bear, but which, having a large traffic to bargain with, they succeed in putting upon the carriers and through them upon the general shipping public. The smaller shippers on this same hill, whose traffic is not so extensive, continue to carry it back and forth to the regular lines by horse and wagon. They get no allowance from the carriers for this; on the contrary they not only bear their own burdens but are compelled, with the rest of the shipping public, to share the cost to the carriers of the allowances made to their larger neighbors for doing the same work.

There remains one other thought in connection with this case which may be disposed of in a few words. The Manufacturers' Railway now has a track running through Second street which is not ordinarily used for the brewery. It was no part of the industrial railroad as originally planned, and before it could lawfully be laid

an additional ordinance was necessary. It was necessary also to amend its charter. Possibly that track may fairly be regarded as an addition to the public rail facilities of that part of the city. It is only 2¼ miles long. But after a most attentive study of the record I am unable to regard any part of the tracks, within what I have described as the plant, as being anything other than a part of the equipment of the plant. They form a system of rails for the plant such as was considered in General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C., 237; Solvay Process Co. v. D. L. & W. R. R. Co., 14 I. C. C., 246, and other cases. A portion of these tracks may occasionally be used by an outsider. In that respect the situation is similar to the conditions shown in Crane Iron Works v. P. & R. Ry. Co., 15 I. C. C., 248; and Crane Iron Works v. C. R. R. Co. of N. J., 17 I. C. C., 514, affirmed in Crane Iron Works v. United States, 1 Com. Ct. Rep., 453. The Manufacturers' Railway has no stations and expressly refuses less-than-carload traffic. It has no desire to serve the public over the plant tracks that I have been endeavoring to describe, except as such service may aid in giving to those rails the appearance of having been intended
98 to serve the public. If this small and purely incidental and negligible service for others is sufficient to justify this great inroad upon the revenues of the carriers and the indirect tax that it casts upon the general shipping public, then all the plant railroads now being incorporated throughout the country by their respective proprietary industries, as a basis for having the trunk line carriers assume the cost of their operation through allowances, will be entitled to the same results, and the practice will become a fixed burden of enormous proportions on the transportation of the country to be borne by the general public through the general schedule of rates.

99 EXHIBIT C.

100 Interstate Commerce Commission.

No. 3151.

MANUFACTURERS RAILWAY COMPANY et al.
v.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY et al.

101 No. 3151.

Investigation and Suspension Docket No. 355.

MANUFACTURERS RAILWAY COMPANY et al.
v.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY et al.

Absorption of Switching Charges at St. Louis, Mo.

Submitted November 13, 1913; Decided July 10, 1914.

1. Findings with respect to the authority and propriety of the Commission establishing joint rates to and from points on the Manufacturers Railway, in St. Louis, which shall not exceed in amount the rates to and from St. Louis, contained in the Commission's supplemental report, 28 I. C. C., 93, reviewed and adhered to, and future procedure in the case outlined.

2. The Commission can not upon the record before it, by affirmative order, establish joint rates on the basis above indicated. If the trunk lines elect voluntarily to participate in the establishment and maintenance of rates on that basis, the division thereof which they may lawfully pay to the Manufacturers Railway may not, in view of the common ownership of a majority of the stock of that carrier and of the Anheuser-Busch Brewing Association, its largest shipper, be more than is just and reasonable for its service.

3. There must in any view taken of this case be some point at which the fact of this common ownership of stock becomes importantly significant; and immediately beyond the limit of reasonableness in allowances, divisions, or concessions of any kind whatsoever granted by the trunk lines to the Manufacturers Railway comes, in the Commission's view, that point. In all other respects this carrier is in this case treated by the Commission just as any other terminal common carrier that does not serve a mutually-owned industry shipper would be.

4. In its supplemental report the Commission expressed the opinion that the division accruing to the Manufacturers Railway of any joint rates which might be established between it and its trunk-line connections should not exceed $2 a car. Upon further consideration view expressed that, subject to any necessary modification thereof upon further hearing with respect to divisions, if the necessity for such further hearing shall later arise, the division accruing to that carrier should not exceed $2.50 a car.

5. Tariffs of certain of the trunk lines defendant herein providing for restoration of the former allowances of $4.50 a car to the Manufacturers Railway, under suspension in Investigation and Suspension Docket No. 355, directed to be canceled.

102 Nagel & Kirby for complainant Manufacturers Railway Company.

F. W. Lehmann for complainant shippers.

William A. Colston and Nelson W. Proctor for Louisville & Nashville Railroad Company.

Report of the Commission on Reargument.

CLEMENTS, *Commissioner:*

We shall dispose first of 3151. June 21, 1913, we announced our supplemental report in that case (28 I. C. C., 93), in which we modified in part the findings contained in our original report (21 I. C. C., 304). The case is now before us upon reargument granted upon petition of the Manufacturers Railway Company (hereinafter referred to as the complainant railway) and certain of its shippers.

Various questions are raised upon the reargument. We deem it unnecessary to refer to them in detail here. They were in the main covered either specifically or in substance and principle in our previous reports. One contention made upon the reargument, however, owing to the emphasis laid upon it, calls for special reference. It is urged by complainants that the findings and conclusions contained in our supplemental report are not in harmony with certain of the conclusions of the Supreme Court in the proceeding brought by the United States against the Terminal Railroad Association of St. Louis under the Sherman antitrust act, reported in 224 U. S., 383. We do not deem it necessary or profitable to enter in this report upon an analysis of that decision and of the terminal situation in and around St. Louis that gave rise to the suit. We think it sufficient to say that we considered that case thoroughly in arriving at the findings and conclusions announced in our supplemental report, and that the case is not, in our mind, controlling of the issues here involved. We have not been convinced upon the reargument that the findings and conclusions contained in our supplemental report were based upon misconception either of fact or of law, and, as hereinafter interpreted, we affirm them. It seems appropriate at this point to recapitulate in a general way the findings contained in our

supplemental report, and to interpret certain of them as to which there seems, on the part of some of the interested parties, to be more or less question.

March 1, 1910, the trunk line carriers at St. Louis canceled certain allowances which for a number of years they had been making to the complainant railway and 12 other short lines of railroad that serve industries in and around St. Louis. Thereupon the complainant railway and certain of its shippers petitioned the Commission to reestablish what they termed in their petition the "through
or joint rates" that had been in effect previous to the can-
103 cellation. The allowances which the complainant railway had been receiving averaged about $4.50 a car. The complainant railway is situated wholly within the limits of South St. Louis. It has about 2 miles of main line and 23 miles of branches and sidings. Its main line connects the Anheuser-Busch Brewing Association, by far its largest shipper, with the trunk lines, thereby affording an outlet to the immense volume of traffic of the brewing association. It also serves other industries and shippers. The stock of the complainant railway and of the brewing association is for the most part owned by the same parties, principally members of the family of the late Adolphus Busch. The complaint is not directed to the reasonableness of the separate rates either of the complainant railway or of the trunk lines. At the time these allowances to the complainant railway were canceled the trunk lines were also absorbing the charge, usually of $3 a car, made by the Terminal Railroad Association of St. Louis, on traffic passing over its rails. The capital stock of the Terminal Railroad Association is owned by the 14 trunk lines entering St. Louis. The absorption of this latter charge the trunk lines did not also discontinue when they canceled these allowances to the complainant railway and the other terminal lines to and from industries, referred to, by reason of which situation the complainant railway and its shippers alleged in their petition that they were thereby subjected to undue prejudice and disadvantage. We held that the trunk lines by their action in canceling the allowances to the complainant railway while continuing to absorb the charge of the Terminal Railroad Association, the stock of which, as stated, they own, did not thereby subject the complainant railway or its shippers to undue prejudice or disadvantage; that the amounts formerly paid by the trunk lines to the complainant railway were voluntary allowances and could not be considered by us to be divisions of joint rates which we could by affirmative order establish; and that the separate rates of the trunk lines and of the complainant railway being necessarily regarded upon the record before us as prima facie reasonable, any joint rates which we could by affirmative order require the carriers in the through route to establish would necessarily be higher than the rates of the trunk lines to and from St. Louis by the amount of that part of the through charge which would accrue to the complainant railway. We further held that while we thus could not require the trunk lines to participate with the complainant railway in joint rates which would not be higher than their rates to St. Louis, they might

voluntarily participate in joint rates on that basis, provided that in the final division of the through charge received from the shipper they did not pay to the complainant railway for its service more than was just and reasonable, and did not thereby in the amount of the excess indirectly refund to the brewing association a
104 part of the through transportation charges paid to them by the brewing association. We held that the former allowances of $4.50 a car paid by the trunk lines to the complainant railway were excessive, and in the last paragraph of the report admonished the trunk lines that any excessive payments by them to the complainant railway would be regarded as unlawful, whether made in the form of allowances, divisions of joint rates, per diem or demurrage payments or agreements, or otherwise. We did not by anything there said condemn the voluntary payment by the trunk lines to the complainant railway of reasonable allowances or divisions; nor did we disapprove of the trunk lines participating with the complainant railway in the establishment and maintenance of joint rates not higher than their rates to and from St. Louis, provided the division thereof received by the complainant railway in final settlement with them was not excessive. Our remarks in that paragraph, as elsewhere in the report, were directed only to any excessive allowances or divisions which the complainant railway might receive.

In our supplemental report we expressed the opinion that from the evidence before us a reasonable division to the complainant railway out of any joint rate which might be established between it and its trunk line connections would be perhaps not to exceed $2 a car. Upon further consideration we express the view that, subject to any necessary modification thereof upon further hearing with respect to divisions, if the necessity for such further hearing shall later arise, the division accruing to the complainant railway should not exceed $2.50 a car.

In our supplemental report we also stated that we would enter an order in the case October 1, 1913, if our findings and conclusions therein were not complied with by that date. Subsequently, upon representation to us by certain of the trunk lines that additional time would be necessary in order to enable them to realign their tariffs in accordance with our findings and conclusions, we extended the period for compliance therewith to November 1, 1913. We further extended this period pending decision upon the reargument. As we herein affirm the findings and conclusions contained in our supplemental report, we shall proceed in connection with this report to enter an appropriate order. It will require the establishment and maintenance by complainant railway and its trunk line connections defendant herein of maximum joint rates to and from points on the complainant railway which shall not exceed in amount the trunk lines' rates to and from St. Louis by more than $2.50 a car. Then, whether the carriers in the through route establish rates on that maximum basis, or, through the voluntary agreement of the trunk lines, on a basis not higher than their St. Louis rates, upon failure of the trunk lines and the complainant railway to
105 agree upon the proper basis of division thereof, and upon request to us so to do, we shall fix the divisions, upon further

investigation, as provided in the act. If that inquiry shall confirm our present impression that $2.50 a car is a reasonable division to the complainant railway, we shall grant it that amount. If, on the other hand, we shall be convinced by the evidence that $2.50 a car is too much, or not enough, we shall fix the amount accordingly. Or, in case we are not asked by the carriers to fix the divisions, upon proper cause appearing we may in our discretion institute an inquiry upon our own motion under those provisions of the act which forbid the giving or receiving of rebates or undue concessions directly or indirectly by any device whatsoever, having in mind particularly in connection therewith the fact of the common ownership of railway and brewery association stock. There must, in any view taken of this case, be some point at which the fact of this common ownership of stock becomes importantly significant, and immediately beyond the limit of reasonableness in allowances, divisions, or concessions of any kind whatsoever granted by the trunk lines to the complainant railway, comes, in the Commission's view, that point. If this be not so, then gross discriminations must thrive, notwithstanding the inhibitions of the act against undue preferences and discriminations. Manifestly, it would be absurd for anyone to contend that the receipt by the complainant railway of a division amounting to ten or fifteen dollars a car would not be viewed with suspicion. It is only as we approach a sum which on its face may or may not be reasonable that we encounter question from any source as to the necessity for close scrutiny and regulation in this respect. In all other respects but this one of closer examination and regulation of its divisions and concessions we treat the complainant railway herein just as we would treat any other terminal common carrier that does not serve a mutually-owned industry shipper.

We shall make our order herein against the complainant railway as well as against the trunk lines in the full understanding that the former is named in the petition as a complainant and not as a defendant. However, the prayer of the petition can be granted only upon the theory that the complainant railway asks and expects to be dealt with upon the same basis as any other common carrier in the through routes over which it asks for the establishment of joint rates would be. The fact that the complainant railway is made a nominal complainant in the petition and has been the principal complainant in fact throughout the conduct of the hearings fits in admirably with what seems to be the real purpose of the proceeding, namely, to make the trunk lines the real defendants and to have us require them to restore to the complainant railway out of their St. Louis rates the former allowances. Were the
106 object of the proceeding to secure bona fide joint rates for the benefit primarily of the complainant railway's shipping public, the complainant railway could just as easily, and in procedure more properly, have been named with the trunk lines as a codefendant in the through route in a complaint brought and prosecuted exclusively by its shippers as a body, including certainly and conspicuously, because of its greater interest in the outcome, the brewing

association. It is significant as bearing upon this latter thought that following the promulgation by us of our supplemental report the complainant railway canceled all its concurrences in the trunk lines' tariffs, thereby rendering impossible compliance by the trunk lines with the prayer of its own petition, since tariffs naming joint rates must, under the act and our tariff regulations, show as concurring therein every common carrier in the through route.

The joint rates prescribed herein may be published, if desired, by merely adding to the trunk lines' tariffs naming rates to and from St. Louis a note to the effect that rates to and from points on the complainant railway will be so much a car higher than the rates to and from St. Louis, and by showing the complainant railway as a participating carrier therein. If the trunk lines elect voluntarily to participate in the establishment and maintenance of rates to and from points on the complainant railway on the St. Louis basis, it will only be necessary to show the complainant railway as a participating carrier in the trunk lines' tariffs.

We have specifically dealt herein only with the rates on carload freight, as that class of traffic constitutes most of the complainant railway's entire freight tonnage. The principles underlying our findings and conclusions with respect to carload traffic apply, however, with equal force to less-than-carload freight.

We desire to make plain herein, as we endeavored to do in our supplemental report, that we are asked in this proceeding to establish these joint rates on the St. Louis basis by affirmative order in a contested case. We merely say in response to that request that this is something which we can not upon this record do, and that if the trunk lines elect voluntarily to establish joint rates on that basis instead of on the maximum basis herein prescribed, the division thereof which they may lawfully pay and the complainant railway lawfully receive shall not, in view of the common ownership of the complainant railway and Anheuser-Busch Brewing Association stock, be more than is just and reasonable for the service which the complainant railway performs.

We have had no hesitancy in stating herein what our future procedure in the case will be. The case has been before us in one form and another since 1910. It has been strenuously contested by some of the trunk lines and by the complainant railway and
107 has attracted wide attention because of the pendency before the Commission of cases similar to it in character as well as on account of its own interest and importance. We are confident in the belief that we have decided the issues raised by it in accordance with both the letter and the spirit of the law. If our conclusions are not sound, we desire that the courts settle definitely the question of what the proper interpretation of the law applicable in this and similar cases is. Cases of this nature involving payments by trunk lines to short terminal lines of railroad which were once only appurtenances to private industrial plants served by them have been the cause of much investigation by and concern to us in our efforts to effectively administer the law under which we act, and

the sooner any doubtful constructions of that law with respect to such matters are clearly settled by judicial decision the better.

In Investigation and Suspension Docket No. 355 is involved the suspension of the operation of tariffs by which certain of the trunk lines defendant in 3151 propose to restore the former allowances of $4.50 a car to the Manufacturers' Railway. The findings and order in 3151 dispose of the questions involved in I. & S. 355. We shall therefore by order direct that the tariffs under suspension in the latter inquiry be canceled forthwith.

HARLAN, *Chairman*, dissenting:

The Anheuser-Busch Brewing Company interests have been before us for five years in an effort to secure the sanction by this Commission of their plan for casting upon the brewery's trunk line connections the burden and expense of operating its plant railway. By this I mean that there has been no controversy here at any time between the brewery and the complainant railway, which I here refer to as the plant railway of the brewery; from the beginning of the proceeding, however, the general interests that own both the brewery and the plant railway have been contending that the trunk lines, out of their revenues, ought to pay the plant railway for moving the immense traffic of the brewery out of and into the plant to and from the interchange tracks of the plant railway with the trunk lines. In this, the third formal report by the Commission in relation to the matter, these contentions are brought to a successful conclusion in the recognition by the Commission of the legal right of the trunk lines to assume this very large burden by establishing the St. Louis rates jointly with the complainant and paying the latter a division out of these rates for handling the brewery's traffic beyond the interchange point. While the report and order of the Commission in that connection are permissive in form the immense traffic of the brewery has a persuasive force so great as practically to force the trunk lines to make such a contribution toward the expense
108 of operating the plant railway. My views and my understanding of the facts in the case have been explained at length in my dissent to the original report, 21 I. C. C. 304, 318, and in my concurrence in the first supplemental report, 28 I. C. C., 93, 111.

I have always thought, and still think, and in my dissent (supra) I stated, that the Second street track of the Manufacturers Railway, which is about 2¼ miles in length, might fairly be regarded as an addition to the public transportation facilities of St. Louis. It seems to me, however, that with respect to all its other trackage our conclusions in General Electric Company v. N. Y. C. & H. R. R. R. Co., 14 I. C. C., 237, and more recent cases, including the Industrial Railways case, 29 I. C. C., 212, ought to control. In those cases we held that a railway company is under no obligation to extend its service beyond a reasonable point of interchange with a plant railway, and that the service between such an interchange point and the various points within the plant is purely a shipper's service and not a carrier's service. The Manufacturers Railway, owned in the interest of the brew-

ing company, has interchange tracks with the trunk lines serving St. Louis, from which more than 50,000 cars a year are handled into and out of the brewery. The various buildings of the brewery cover from 35 to 40 city blocks, and the grounds on which they are situated embrace some 126 acres of land through which the tracks, operated by the Manufacturers Railway, spread like the ribs of a fan, reaching the storehouses, malt houses, bottling works, and all other buildings and parts of the plant. Although larger in extent, this plant railway does not differ materially from the plant railways of hundreds of factories and industries elsewhere in the country. The 8 miles of track within the brewery premises are owned by the brewing company, but were leased by it to the Manufacturers Railway Company, "for railway purposes," upon the express condition that this should not interfere with the reasonable use of the tracks by the brewing association; the lease also provided that the brewing association should "be the sole and only judge" of the reasonableness of the use it might make of the tracks. Notwithstanding our ruling in the cases last cited that the movement of traffic between a plant and the plant interchange tracks in such cases is a shipper's service and not a carrier's service, a principle that seems, when applied to like conditions, to have been accepted as sound with practical unanimity by railroads, industries, and the courts, the Commission here permits the trunk lines out of their rates to pay the shipper for performing an entirely similar service.

The result of the conclusion finally reached and now announced by the majority is to transfer from the brewery to the trunk line carriers the expense of handling the brewery's large traffic to and from its interchange tracks leading into the plant, and to give to the Anheuser-Busch interests the revenues almost of a prin-
109 cipality. The trunk lines in turn must draw upon the general shipping public to pay the bill. The majority report not only relieves the brewing company of the expense of doing for itself with its own plant railway what all but a few unlawfully favored industries of the country must do for themselves and at their own expense, as I understand present conditions, but relieves the brewing company of demurrage, in that any charges of that nature accruing against it will be paid by it, not to the trunk lines, but to its own plant railway and therefore to itself. The immense traffic of the brewery, supported by the conclusions of the majority, will enable the Manufacturers Railway to force itself also into the per-diem rules agreement, yielding the brewing company through that means another rich harvest in the form of reclaims, unless affirmative and very definite steps are taken to see that reclaims do not become a source of any net income to it. It is true that the plant railway, in connection with the plant tracks of which I am now speaking, has one or two team tracks either in or immediately outside the brewery plant, at which it secures a relatively small amount of outside traffic. But the law in my judgment is not so weak as the interpretation put upon it in the majority report, and this outside traffic does not justify the Commission in holding that part of the Manufacturers' Railway to be, in law, anything other than it is physically,

namely, a plant facility. Certainly nothing said by the court of highest resort in The Tap Line cases, 234 U. S., 1, either requires or justifies the special advantages thus accorded by the majority to the brewing company. That court says (p. 23):

What the Commission means by plant facilities may be gathered from a consideration of some of its decisions. In General Electric Co. v. N. Y. C. & H. R. R. R., 14 I. C. C., 237, a network of interior switching tracks constructed to meet the necessities of the business were held to be mere plant facilities. The same principle was applied to the internal trackage of large industrial plants in Solvay Process Company v. D., L. & W. R. R. Co., 14 I. C. C., 246. These systems of internal trackage were not common carriers, and, however extensive, were intended to and did furnish service for the plants which owned and operated them.

The unlawful preferences resulting to the brewing company from the holding of the majority report that all these plant tracks, constructed by the brewery for its own purposes, and in some cases running even into its warehouses and malt houses, are public tracks and the service performed over them a carrier's service, are so obvious as to require no further discussion. An illustration will suffice. As pointed out in my dissent to the original report, 21 I. C. C., 304, 319, the Lemp brewery is in the immediate neighborhood of the Anheuser-Busch brewery. Its traffic amounts to
110 from 10,000 to 12,000 carloads a year, and, though large, is relatively small when compared with the traffic of the Busch brewery. Like the latter, the Lemp brewery is situated on the hills of South St. Louis, and the streets leading down to the rails of the trunk lines on the river front are of severe grade. In order to get its traffic into and out of its plant, a service which as heretofore explained we have under like conditions held to be purely a shipper's service, the Lemp brewery has devised a powerful drum operated by a stationary engine, by means of which, with steel cables, cars are pulled up and let down to and from its interchange tracks with trunk lines. Shall the trunk lines also pay that company out of their rates for this service for itself, performed with special machinery and devices installed, undoubtedly, to supplant and take the places of horses and wagons, because thought to be more economical in view of the company's large traffic? It is incorporated as a railroad company and actually handles some carload shipments for its neighbors; so far as mere outward form is concerned it is therefore in a position to receive favors in the way of allowances from the trunk lines. And if such allowances are permitted to the Busch brewery, I do not see how in justice they may be refused to the Lemp brewery, for a mere difference in the means by which shippers do for themselves precisely the same thing can not be a sufficient justification for a difference in their treatment by the trunk lines. The smaller shippers on the same hills in South St. Louis, with traffic not large enough to justify the expense of constructing plant railways, must not only do their hauling back and forth from the trunk lines with horses and wagons, but must submit to rates that involve and provide for these large payments by the line carriers to industries that use

rails and locomotives and cables and drums for performing the same service for themselves.

It is certain that the great privileges enjoyed by large shippers in the form here recognized as proper by the majority will not be tolerated by the general shipping public, which must bear the burden, when they are more fully understood; and the present law, which in my judgment is entirely adequate to enable us to cope with the evil, must either be more strongly construed in the public interest or must promptly be amended by the Congress.

For the reasons thus briefly expressed, I must withhold my assent to the report and order of the Commission in this proceeding.

111 *Orders.*

At a General Session of the Interstate Commerce Commission, Held at its Office, in Washington, D. C., on the 10th Day of July, A. D. 1914.

No. 3151.

MANUFACTURERS' RAILWAY COMPANY, ANHEUSER-BUSCH BREWING Association, Stecher Cooperage Works, Independent Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel Ganahl Lumber Company, St. Louis Cooperage Company, and Western Foundry and Sash Weight Company, Corporations,

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; The Missouri Pacific Railway Company; The Wabash Railroad Company; Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railroad Company; St. Louis Southwestern Railway Company; Louisville & Nashville Railroad Company; The Baltimore & Ohio Southwestern Railroad Company; Chicago, Burlington & Quincy Railroad Company; The Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company; Chicago, Rock Island & Pacific Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Illinois Central Railroad Company; Mobile & Ohio Railroad Company; Southern Railway Company; Vandalia Railroad Company; Toledo, St. Louis & Western Railroad Company; Chicago, Peoria & St. Louis Railway Company of Illinois, Corporations, and John C. Ramsey and Henry M. Merriam, Receivers of said Chicago, Peoria & St. Louis Railway Company of Illinois.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and
112 full investigation of the matters and things involved having been had, and the Commission having, on June 21, 1911, made and filed a report containing its findings of fact and conclusions thereon; and having, on June 21, 1913, made and filed a

supplemental report containing its further findings of fact and conclusions thereon; and having on the date hereof made and filed its report upon reargument; which said reports are hereby referred to and made a part hereof:

It is ordered, That the above-named defendants and the Manufacturers Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required, on or before January 1, 1915, to cease and desist from charging, demanding, collecting, or receiving their present rates on traffic moving in through transportation between points on the line of said Manufacturers Railway Company and points on the lines of defendants in states other than Missouri, to the extent that said rates exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and the same points in states other than Missouri, by more than $2.50 per car.

It is further ordered, That the above-named defendants and the Manufacturers Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required to establish and put in force, on or before January 1, 1915, and to maintain in force thereafter for a period of not less than two years, and apply to said traffic, rates which shall not exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and points in states other than Missouri, by more than $2.50 per car.

Investigation and Suspension Docket, No. 355.

Absorption of Switching Charges at St. Louis, Mo.

It appearing, That on December 19, 1913, the Commission entered upon an investigation concerning the lawfulness and propriety of the rates, charges, regulations, and practices stated in the schedules designated as follows: Chicago, Peoria & St. Louis Railroad Co., supplement No. 2 to I. C. C. No. 953; and St. Louis Southwestern Railway Co., supplement No. 5 to I. C. C. No. 3219, and subsequently ordered that the operation of said schedules contained in said tariffs be suspended until November 7, 1914;

It further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings
113 of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the carriers respondent herein and designated in said tariffs be, and they are hereby, notified and required to cancel, on or before November 7, 1914, the rates, charges, regulations, and practices stated in the schedules specified in said orders of suspension.

By the Commission.

[SEAL.] GEORGE B. McGINTY, *Secretary.*

114 And Afterwards, to-wit on the 24th day of February, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(*Order.*)

In the District Court of the United States, Eastern District of Missouri, Eastern Division.

In Equity. No. 4384.

MAUFACTURERS' RAILWAY COMPANY (a Corporation) and ST. Louis Southwestern Railway Company (a Corporation), Petitioners.

v.

UNITED STATES OF AMERICA, Respondent.

Order.

On motion of Counsel for the United States, due notice having been given, it is ordered that its amended answer to the petition herein be and the same is hereby filed.

Feb. 24, 1915.

(Signed) ELMER B. ADAMS,
United States Circuit Judge.

Which said Amended Answer, is in words and figures, as follows, to-wit:

(*Amended Answer of the United States.*)

115 In the District Court of the United States, Eastern District of Missouri, Eastern Division.

In Equity. No. 4384.

MANUFACTURERS' RAILWAY COMPANY and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

v.

UNITED STATES OF AMERICA.

Amended Answer of the United States.

Filed by Leave of Court.

116 In the District Court of the United States, Eastern District of Missouri, Eastern Division.

In Equity. No. 4384.

MANUFACTURERS' RAILWAY COMPANY (a Corporation) and ST. LOUIS Southwestern Railway Company (a Corporation), Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Amended Answer of the United States.

First Defense.

United States, for a first defense to the petition filed herein against it, says:

1. It denies that Manufacturers' Railway Company, one of the petitioners herein (except the Second Street Line thereof), is a common carrier subject to the act to regulate commerce.

2. It alleges that Anheuser-Busch Brewing Association, a corporation engaged in the manufacture and sale of beer, is the principal party in interest. Its grain houses, malt houses, warehouses, brewing houses, rice houses, bottling works, repair shops, stables, etc., 117 that make up the brewery plant cover 35 or 40 city blocks within the corporate limits of the city of St. Louis, or a total area of 126 acres of ground, all closely covered with structures of one kind or another in which the various processes in the manufacture and marketing of beer and related products are carried on. Some of these structures are individually as large as many factories.

3. In the early days of the enterprise the inbound raw material and the outbound products of the Anheuser-Busch Brewing Association were drawn by horse and wagon to and from the tracks of the St. Louis, Iron Mountain & Southern Railway Company at a point

on the front of the Mississippi River near First Street, St. Louis. The plant is situated on the hills of South St. Louis, and the grade of the streets is such as to make it difficult and expensive to dray traffic in large volume to and from the rails of the carriers. With the growth of the industry the use and maintenance of the horses and wagons became a large item in the manufacturing cost, and it was found essential about the year 1885 to abandon that means of doing the work and to substitute a plant railway in order the more economically to move the increasing tonnage of the plant to and from the tracks of the carriers. The substitution of one form for the other of doing the same thing was brought about in the interest of the Anheuser-Busch Brewing Association and not in any degree in the interest of the shipping public. Substantially all the tracks (except
118 the Second Street line) were laid for the Anheuser-Busch Brewing Association, and for it alone.

4. Anheuser-Busch Brewing Association and Manufacturers' Railway Company are owned, dominated, controlled, and operated, and always have been, by one and the same interest, to wit, Adolphus Busch and members of his family in his lifetime, and, since his death, the estate of Adolphus Busch and members of his family. The profits from the operation of each institution go to the same parties, who are few in number.

5. The rails that were installed by the industry to take the place of the horses and wagons run into and between the various buildings and through the narrow passageways that separate them. In some cases they are inclosed between the walls of these buildings, and in other cases by fences or walls surrounding open places adjacent to the buildings. The total length of the railway is about 25 miles, 2½ miles of which are represented by three stems, and the entire remainder by private spurs, team tracks, and yards of which the trackage within the three main departments of Anheuser-Busch Brewing Association and its extensive classification yards east of the viaduct on the river front constitute the main and greater part. Manufacturers' Railway has four engines but no cars. It does not handle less than carload freight and has no passenger business. The tracks in the open yard of the bottling department, on the Ninth and Dorcas Streets sides, are inclosed by an iron fence on which are displayed "No thoroughfare" signs; the four-team tracks in
119 this yard end on the edge of an embankment supported by a concrete wall built up from Ninth Street, which is some 10 or 12 feet below, and topped with an iron fence. The tracks on the Thirteenth Street side of this department are ended some 10 or 15 feet below the street level by a stone wall and must therefore be reached by entries from other sides. The team tracks in the yard at Ninth and Pestalozzi Streets are inclosed by a high iron fence with swinging gates. The twenty-five or more ladder tracks in the yards beginning at Second and Pestalozzi Streets running west to Broadway, are ended some 25 feet below the level of Broadway by an embankment which is reinforced by a concrete or stone wall topped with an iron fence. As access to the latter tracks from the Broadway side is thus absolutely impracticable, entrance must be effected

from Pestalozzi Street or between buildings of the brewery on the Arsenal Street side between Second and Broadway. While occasionally a car may be handled for patrons other than Anheuser-Busch Brewing Association, such cars can not be set and delivered on those tracks except in negligible number because of the extensive business of Anheuser-Busch Brewing Association. Those yards were never intended to be open to all shippers. The original lease under which those tracks were let by the Anheuser-Busch Brewing Association to the petitioner provided that such tracks were to be available for the general public only when the handling of outside shipments did not interfere with the conduct of the business, of which the
120 brewery was to be the sole judge. At the present time the lease carries no such limitations, but the business is still conducted in the same manner.

6. In its complaint before Interstate Commerce Commission, Manufacturers' Railway Company asserted identity of ownership, operation and control with Anheuser-Busch Brewing Association by claiming allowances under section 15 of the Act to Regulate Commerce, which provides that "if the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowances therefor shall be no more than is just and reasonable."

7. The inbound and outbound traffic handled for the alleged independent shippers consists in the main, if not wholly, of local freight; or freight of which Anheuser-Busch Brewing Association is either the consignor, consignee, seller, or purchaser thereof in the operation, management, and growth of its plant, all of which is handled on the tracks within and around the plant and the various buildings thereof, not for and at the convenience of such shippers but for and at the sole convenience of Anheuser-Busch Brewing Association.

8. Approximately 55,000 cars are handled annually by Manufacturers' Railway Company. With the exception of the cars handled on the Second Street line for shippers not connected with and independent of Anheuser-Busch Brewing Association, which
121 cars constitute but a very small percentage of the total, substantially the entire traffic is handled for Anheuser-Busch Brewing Association, and the claim of Manufacturers' Railway Company for allowances is based upon the services performed by Manufacturers' Railway Company wholly within the shipping plant of Anheuser-Busch Brewing Association (except such services as may be performed on the Second Street line) and is not a transportation service within the meaning of the act to regulate commerce for which the Manufacturers' Railway Company is entitled to make a charge, but is a plant service rendered for Anheuser-Busch Brewing Association exclusively, and any payment or allowance therefor by the St. Louis Southwestern Railway Company to Manufacturers' Railway would result in rebates, preferences, and discriminations in violation of the act to regulate commerce.

9. Wherefore, Manufacturers' Railway Company (except the Sec-

ond Street line thereof) is not a common carrier subject to the act to regulate commerce, but is a part of the manufacturing plant of Anheuser-Busch Brewing Association and constitutes facilities thereof. As such it has no standing in a court of equity to maintain this proceeding, and is not entitled to invoke the jurisdiction of the court in that behalf.

Second Defense.

United States, for a second defense to the petition filed against it, says: If Manufacturers' Railway Company, petitioner herein, is a common carrier engaged in commerce among the several
122 States in manner and form as found by the Interstate Commerce Commission, then—

I. It admits the matters and things alleged in paragraph I, in manner and form as alleged.

II. It admits the matters and things alleged in paragraph II, in manner and form as alleged, with this exception: It denies that Manufacturers' Railway Company is a common carrier to the extent alleged, and alleges that the extent to which Manufacturers' Railway Company is a common carrier is fully defined by the Interstate Commerce Commission in its three reports, to which reference is here made for greater certainty.

III. With the exceptions that it admits St. Louis Southwestern Railway Company has no rail connection with Manufacturers' Railway Company, and that St. Louis Southwestern Railway Company, on December 7, 1913, filed its Tariff Supplement No. 5 to Local Tariff No. 6188 of the St. Louis Southwestern Railway Company, effective January 7, 1914, which proposed to make an allowance of $4.50 per car to Manufacturers' Railway Company, which said tariff the Interstate Commerce Commission suspended, it has no knowledge of the matters and things alleged in paragraph III, in manner and form as alleged, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

IV, V, VI. It admits the commission made and entered the three orders referred to in Investigation and Suspension Docket
123 No. 355.

VII. It admits that the commission, in said order of July 10, 1914, referred to a certain report of even date therewith, containing its findings of fact and conclusion thereon, and that the said report referred to was made a part of the said order. It admits that the report and findings of fact and conclusions thereon thus referred to are the several reports or decisions of said commission made in Manufacturers' Railway Company et al. v. St. Louis, Iron Mountain & Southern Railway Company et al., I. C. C. Docket No. 3151. It denies that the several findings set out in the said various reports or decisions rendered by the commission in said cause No. 3151 do not warrant the order made in Investigation and Suspension Docket No. 355.

VIII. It denies that the order of July 10, 1914, of the Interstate

Commerce Commission is unlawful and void for the reasons stated, or for any of them.

(1) It denies the matters and things alleged in part (1) of paragraph VIII, and each and every part of the same, in manner and form as alleged.

(2) It denies the matters and things alleged in part (2) of paragraph VIII, and each and every part of the same, in manner and form as alleged.

(3) It denies the matters and things alleged in part (3) of paragraph VIII, and each and every part of the same, in manner and form as alleged.

(4) It denies the matters and things alleged in part (4) of paragraph VIII, and each and every part of the same, in manner and form as alleged, with this exception: It admits that said order prohibits St. Louis Southwestern Railway Company from paying to Manufacturers' Railway Company as great a sum as $4.50 per car.

124 (5) It denies the matters and things alleged in part (5) of paragraph VIII, and each and every part of same, in manner and form as alleged.

(6) It denies the matters and things alleged in part (6) of paragraph VIII, and each and every part of the same, in manner and form as alleged.

(7) It denies the matters and things alleged in part (7) of paragraph VIII, and each and every part of the same, in manner and form as alleged.

Defendant alleges that the matters and things alleged in the petition and sought to be put in issue were all before the Interstate Commerce Commission in the various hearings had before it in No. 3151, to which the petitioners were parties, and were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the act to regulate commerce. In its reports in writing with respect thereto, made after full hearings on due notice to all of the parties, which state its conclusion together with its decision, order, or requirement in the premises, the matters and things of which complaint is now made were fully considered and foreclosed by findings of fact, based on substantial evidence adduced on the issues made by the parties.

Further answering the said petition, and each and every part of the same, in so far as it has not heretofore been admitted, denied, or otherwise traversed, defendant denies:

(*a*) Any fact or facts alleged in said petition, or any part of the same, which deny, or which seek to deny, any fact or facts
125 found by the Interstate Commerce Commission in its said reports and order.

(*b*) Any fact or facts alleged in said petition, or any part of the same, which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order.

(*c*) Any and all inferences of fact from any particular fact or facts alleged in the said petition, or any part of the same, which seek

to deny, or which are inconsistent with, any fact or facts found by the Interstate Commerce Commission, in its said reports and order.

(*d*) Any fact or facts alleged in said petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Interstate Commerce Commission.

(*e*) Any fact or facts alleged in said petition, or any part of the same, which attack, or which seek to attack, the reports and order of the Interstate Commerce Commission, and to show facts contrary to what the said reports and order show on the face thereof.

(*f*) Any allegations in said petition, or any part of the same, which allege that facts were found by the Interstate Commerce Commission in its said reports and order which, as shown on the face thereof, in fact were not so found.

(*g*) Any conclusions of law alleged and insisted upon in the said petition, or any part of the same, which are inconsistent with
126 any conclusions of law held by the Interstate Commerce Commission in its said reports and order.

Respondent gives notice that upon the final hearing hereof, or upon any preliminary hearing hereof, and in accordance with section 1 of the act entitled "An act to create a Commerce Court," etc., approved June 18, 1910, it will move to dismiss the petition, for that the same is insufficient to state any cause of action.

Third Defense

United States for a third defense to the petition filed herein against it, says:

1. St. Louis Southwestern Railway Company, in joining in the petition with Manufacturers' Railway Company, is seeking to make and maintain a cause of action which does not belong to it, St. Louis Southwestern Railway Company.

2. In the original proceedings before the Interstate Commerce Commission Manufacturers' Railway Company and certain others were joint complainants and St. Louis, Iron Mountain & Southern Railway Company and certain other carriers, including St. Louis Southwestern Railway Company were joint defendants, and the said proceedings were commenced by Manufacturers' Railway Company and conducted as though the interests of Manufacturers' Railway Company and St. Louis Southwestern Railway Company were opposed. The said two companies were on opposing sides. In now appearing as petitioner with Manufacturers' Railway Company against the order of the Interstate Commerce Commission St.
127 Louis Southwestern Railway Company has shifted its position.

3. The order of the Interstate Commerce Commission sought to be annulled and enjoined by St. Louis Southwestern Railway Company is more favorable to St. Louis Southwestern Railway Company than is the relief which it asks, in that the allowance of $2.50 per car is far less than the amount which St. Louis Southwestern Railway Company seeks to pay for the same thing. There is, therefore, no confiscation of the property of St. Louis Southwestern Railway Company.

4. The petition of St. Louis Southwestern Railway Company is without equity on its face, and it has no standing in a court of equity to annul and enjoin the order of the Interstate Commerce Commission and is not entitled to invoke the jurisdiction of the court in that behalf.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
ARTHUR L. OLIVER,
United States Attorney, Eastern District of Missouri, Eastern Division.

128 And afterwards, to-wit, on the 11th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

4384.

MANUFACTURERS RAILWAY COMPANY et al., Complainants,
vs.
UNITED STATES OF AMERICA et al., Defendants.

Now at this day comes Byron F. Babbitt, Esquire, Special Examiner herein, and files in this cause, jointly with cause No. 4385, a transcript of the testimony taken and exhibits thereto.

And afterwards, to-wit on the 12th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

4384.

MANUFACTURERS RAILWAY COMPANY et al., Complainants,
vs.
UNITED STATES OF AMERICA et al., Defendants.

Now at this day come the parties hereto by their respective solicitors, and the argument of this cause upon the final hearing before their Honors, Circuit Judges Walter H. Sanburn and Elmer B. Adams, and District Judge David P. Dyer, is commenced but not being concluded at the hour of adjournment, the further hearing of the same is postponed until the opening of Court tomorrow morning at Ten o'clock.

And afterwards, to-wit on the 13th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

129 4384.

MANUFACTURERS RAILWAY COMPANY et al., Complainants,
vs.
UNITED STATES OF AMERICA et al., Defendants.

Now at this day come again the parties hereto by their respective solicitors, and this cause is now further argued before and finally submitted to the Court.

130 And afterwards, to-wit on the 16th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(Order.)

131 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS RAILWAY COMPANY et al., Complainants,
vs.
UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Complainant,
vs.
UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

The Court having fully considered the application of Byron F. Babbitt Esq. for an allowance for his services as Special Examiner in the above-entitled causes, doth order that said Examiner be and he is hereby allowed the sum of One Hundred and Fifty Dollars for his services, and that Misses L. M. Eagan and M. J. Cook be and they are hereby allowed the sum of Two Hundred Fifty-six Dollars Eighty Cents, being the amount of the bill presented by them for their services in reporting and transcribing the testimony taken before said Examiner; that both said amounts be apportioned equally between the two causes, and be taxed as costs against complainants at whose instance said proofs were taken.

March 16th, 1915.

(Signed) WALTER H. SANBORN,
(Signed) ELMER B. ADAMS,
Circuit Judges.
(Signed) DAVID P. DYER,
District Judge.

132 And afterwards, to-wit on the 26th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(*Order.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS RAILWAY COMPANY, a Corporation, and ST. LOUIS *and* SOUTHWESTERN RAILWAY COMPANY, a Corporation, Complainants,

vs.

UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

The bill of complaint in this cause, containing a prayer for injunction to suspend the operation of an order of the Interstate Commerce Commission, having been filed before and presented to the undersigned on December 10th, 1914, and the said cause having come on for hearing upon such application for injunction and upon final hearing, the undersigned did call to his assistance upon said hearing on March 12th and 13th, 1915, the Honorable Walter H. Sanborn, United States Circuit Judge for the Eighth Circuit, and the Honorable David P. Dyer, United States District Judge for the Eastern District of Missouri, as required by the Act of Congress in such cases.

It is accordingly ordered that this record of the same be entered nunc pro tunc as of the first day of such hearing, namely, March 12th, 1915.

March 26th, 1915.

(Signed) ELMER B. ADAMS,
Circuit Judge.

133 And afterwards, to-wit on the 26th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(Order.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS RAILWAY COMPANY, a Corporation, and ST. LOUIS *and* Southwestern Railway Company, a Corporation, Complainants,

vs.

UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

This cause having come on to be heard at the September Term 1914 of this District Court, and having been argued by counsel for the respective parties and submitted to the Court on March 13th 1915 upon the pleadings and proofs adduced; the Court being now fully advised in the premises doth

Order, adjudge and decree that the bill of complaint in this cause be and the same is hereby dismissed, at the costs of the said complainants, for which costs let execution issue.

March 26, 1915.

(Signed) ELMER B. ADAMS,
Circuit Judge.

(Signed) DAVID P. DYER,
Dist. Judge.

Sanborn, Circuit Judge, dissents.

And afterwards, to-wit on the 12th day of May, 1915, there was filed in said cause, Petition for appeal, in words and figures as follows, to-wit:

134 *(Petition for Appeal.)*

In the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS RAILWAY COMPANY, and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Petition for Appeal.

To the Honorable Judges of said Court:

Your petitioners, Manufacturers Railway Company, a corporation, and St. Louis Southwestern Railway Company, a corporation, peti-

tioners in above case, conceiving themselves aggrieved by the final decree of this Court made and entered in this cause on the 26th day of March, A. D. 1915, do hereby appeal from said decree to the United States Supreme Court, for the reasons specified in the assignment of errors which is filed herewith.

Wherefore, your petitioners pray for an order that said appeal may be allowed, and that citation issue as provided by law, and that such portions of the original record, papers and exhibits in this Court, be transmitted to the Supreme Court of the United States, instead of a transcript thereof, and that a transcript of such other portions of the record and proceedings here be transmitted to said Supreme Court, as appellants have designated respectively, in their præcipe for appeal filed herein with this petition for appeal.

SIDNEY F. ANDREWS,
Solicitor for Petitioner Manufacturers' Railway Company.
A. H. WEST & E. A. HAID,
Solicitors for Petitioner St. Louis Southwestern Railway Company.

135 And thereupon, on said 12th day of May, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(Order Granting Appeal.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS RAILWAY COMPANY, and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Order Granting Appeal.

The above named petitioners, Manufacturers Railway Company, a corporation, and St. Louis Southwestern Railway Company, a corporation, pray an appeal from the decree rendered by this Court in the above entitled cause on the 26th day of March, A. D. 1915, to the Supreme Court of the United States; and said petitioners having filed with the Clerk of this Court their petition for appeal, together with an assignment of errors, and an appeal bond, which bond has been duly approved by the Court.

It is ordered, adjudged and decreed by the Court that said appeal be granted and allowed and that the Clerk of this Court transmit to the Supreme Court of the United States such portions of the

original record papers and exhibits in this Court, instead of a transcript thereof, together with a transcript of such other portions of the record and proceedings, herein, as appellants have designated in their præcipe for appeal filed herein.

The foregoing is hereby approved for entry this 12th day of May, A. D. 1915.

(Signed) ELMER B. ADAMS,
Circuit Judge.

136 Which said Assignment of Errors, Appeal Bond, and Election and Præcipe for Transcript, are respectively in words and figures as follows, to-wit:

(Assignment of Errors.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS RAILWAY COMPANY and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Assignment of Errors.

And now, on this, the 12 day of May A. D. Nineteen Hundred and Fifteen, came the petitioners, and file the following Assignment of Errors upon which they and each of them will rely upon their prosecution of their appeal from the decree made by this honorable Court on the 26th day of March, A. D. Nineteen Hundred and Fifteen, in the above entitled cause.

1.

That the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, erred in dismissing the said suit, and entering a final decree in favor of the said respondents, United States of America and Interstate Commerce Commission for their costs against petitioners.

2.

That said Court erred in not setting aside the order of the Interstate Commerce Commission, dated April 20, A. D. 1915, suspending the tariff of the St. Louis Southwestern Railway Com-
137 pany viz: its Supplement No. 5 to I. C. C. No. 3219 for a period of six months, viz: from May 7, 1914 to November 7,

1914, because said Commission had no lawful authority to make said order, there having been no hearing granted said Railway Company during the first period of suspension of one hundred and twenty days.

3.

That said Court erred in not setting aside the order of said Commission of date July 10, 1914, commanding the St. Louis Southwestern Railway Company to cancel, on or before November 7, 1914, the rates, charges, regulations and practices, stated in its Supplement No. 5 to I. C. C. No. 3219.

4.

That said Court erred in not setting aside said order of the Commission of July 10, 1914, because there was no proof before the Commission that the payment of $4.50 per car, provided for in said tariff to be paid to the Manufacturers Railway Company for its services, was so excessive as to amount to a rebate to the joint owners of the capital stock of the Anheuser-Busch Brewing Association, a corporation, and the Manufacturers Railway Company, a corporation.

5.

That the Court erred in not setting aside said order, because the Commission was without authority in law to make said order until, upon investigation and hearing, it had first found that the payment of $4.50 per car, as provided in said tariff, was so excessive as to constitute a rebate or discrimination in favor of the joint owners of the Anheuser-Busch Brewing Association and the Manufacturers Railway.

6.

That the Court erred in not setting aside said order of July 10th, because the same exceeds the power of the Commission in that said order is unconstitutional, and if made effective will deprive
138 petitioner, Manufacturers Railway Company, of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, for the reason that a rate of less than $4.50 per car is not, and will not be, sufficient to pay the cost of transportation performed by said Railway Company and yield it a just and fair return upon the fair value of the property used by it in said transportation.

In order that the foregoing Assignment of Errors may be and appear of record, the petitioners present the same to the Court and pray that such disposition be made thereof as in accordance with law and the Statutes of the United States in such cases made and provided, and petitioners pray a reversal of the decretal order and

decree of dismissal made and entered by said Court, and that the said Court be instructed to enter such decree as is prayed for by said bill.

SIDNEY F. ANDREWS,
Solicitor for Petitioner Manufacturers' Railway Company.
S. H. WEST &
E. A. HAID,
Solicitor for Petitioner St. Louis South-Western Railway Company.

(*Appeal Bond.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS' RAILWAY COMPANY and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Petitioners
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

139 Appeal Bond.

Know all men by these presents, that we, Manufacturers' Railway Company, a corporation, and St. Louis Southwestern Railway Company, a corporation, as principals, and August A. Busch as surety, are held and firmly bound unto the United States of America and the Interstate Commerce Commission for the benefit of whom it may concern, in the sum of Five Hundred Dollars, to be paid to the said United States of America and the Interstate Commerce Commission for the benefit of whom it may concern, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of May, A. D. 1915.

Whereas, the above named Manufacturers' Railway Company and St. Louis Southwestern Railway Company, have obtained an appeal to the Supreme Court of the United States, in the above entitled cause on the 12" day of May, A. D. 1915.

Now, therefore, the condition of this obligation is such, that if the above named Manufacturers Railway Company and St. Louis Southwestern Railway Company, shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good,

then this obligation shall be void; otherwise the same shall remain in full force and virtue.

MANUFACTURERS' RAILWAY COMPANY,
By G. F. MOORE, *President.* [SEAL.]

Attest:
[SEAL.] OTTO W. RASSFELD,
Sec'y & Treas.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
By F. H. BRITTON, *President.* [SEAL.]

Attest:
[SEAL.] G. K. WARNER,
Ass't Sec'y.

AUG. A. BUSCH, *Surety.* [SEAL.]

Approved this 12th day of May, A. D. 1915.

140 *(Election and Præcipe for Transcript.)*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS' RAILWAY COMPANY and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Election and Præcipe for Transcript.

To the Clerk of the Above-Named Court:

You will please prepare a written transcript, duly certified by you, of the record in this cause, to be filed together with certain portions of the original record herein, in the office of the Clerk of the United States Supreme Court, under the appeal heretofore perfected to said Court, and include in said transcript and with it send to said Clerk, the following pleadings, proceedings and papers on file, to-wit:

1. The original citation issued herein requiring the respondents to appear in the Supreme Court of the United States on this appeal, and proof of service thereof.

2. The following portions duly certified by you, of the record herein, viz:

(*a*) Send a transcript of the original printed petition of the Manufacturers' Railway Company and St. Louis Southwestern Railway Company against the United States of America, filed in this Court.

(*b*) Send a transcript of the original printed answers (and
141 amended answers if any) of the United States of America, and of the Interstate Commerce Commission, intervening respondent, filed in this Court.

(*c*) A transcript of all orders and decrees made in this case.

(*d*) A transcript of the petition for appeal, order of the Court granting such appeal, and of the appeal allowed, the assignment of errors of the petitioner and intervening petitioners upon this appeal, the undertaking on appeal, and all orders of the Court and of the judge in chambers relating thereto.

3. The original typewritten transcript of evidence (four volumes), introduced before the Interstate Commerce Commission with all exhibits thereto, filed in this Court, together with one copy (each) of the two "abstracts" thereof before the Commission, which were filed in this Court.

4. The original condensed statement (filed herein by appellants and approved by the court) of the evidence in this case, (other than that introduced before the Interstate Commerce Commission, which is called for under "3" last above), said condensed statement being a copy of the printed "abstract of evidence" filed in this Court and cause.

5. A transcript of all objections to the introduction of any evidence made herein by any party.

6. Send the original map exhibit No. 1 and the original exhibits Nos. 2 and 3 to the testimony of W. J. Kendrick, which exhibits were filed in this Court, with transcript of evidence and proceedings before Byron F. Babbitt, Special Commissioner.

7. The certificate of the clerk to the correctness of the record on appeal in this case, and to the correctness of the original papers herein requested to be transmitted as a part of such record.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Supreme Court, and on file in the office of the Clerk of said Supreme Court of the
142 United States at Washington, D. C. on or before ——, 1915.

SIDNEY F. ANDREWS,
Solicitor for Appellant Manufacturers' Railway Company.

S. H. WEST &
E. A. HAID,
Solicitors for Appellant St. Louis Southwestern Railway Company.

April 30, 1915.

Service acknowledged and ten days' notice waived.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

Service acknowledged and ten days' notice waived.
April 30, 1915.

JOS. W. FOLK,
Counsel for Interstate Commerce Commission.

143 (*Clerk's Certificate.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings, in cause No. 4384, of Manufacturers' Railway Company, et al., Complainants, versus United States of America, et al., Defendants, together with all things of and concerning the same as fully as the same remains on file and of record in said cause in my office, save as restricted by the præcipe for transcript hereinbefore set forth and save that certain original files constituting a part of said record, as called for by and described in said præcipe for transcript are separately transmitted, by authority of order granting appeal and under appropriate certificates, to the Supreme Court of the United States and are, by this reference, incorporated herewith as a part hereof; and that the original citation is hereto attached and herewith returned.

In witness whereof, I hereunto set my hand and affix the seal of said District Court, at office, in the city of St. Louis, in said Division of said District, this 25th day of May, A. D. 1915.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL,
Clerk of said District Court.

[United States internal revenue documentary stamp, series of 1914, ten cents, cancelled May 25, 1915. W. W. Nall, Clerk.]

144 In the Supreme Court of the United States, October Term, 1915.

No. 487.

MANUFACTURERS' RAILWAY COMPANY and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Appellants,
v.
UNITED STATES OF AMERICA, Appellee, and INTERSTATE COMMERCE COMMISSION, Intervening Appellee.

Stipulation for Printing Record.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective counsel, that the clerk shall print the following matter to constitute the printed record for the hearing of the appeal in the above entitled cause.

1. Citation on appeal.
2. Petition for injunction.
3. Answer of the United States.
4. Order appointing Byron F. Babbitt, Esq., special examiner.
5. Answer of the Interstate Commerce Commission.
6. Order allowing amended answer of the United States to be filed.
7. Amended answer of the United States.
8. Abstract of evidence with exhibits taken before Byron F. Babbitt, Esq., special examiner, commencing February 15, 1915 (consisting of a single printed volume bound in blue cover, 340 pages), together with the typewritten portion of "Appellants' Condensed Statement," to which a copy of said printed abstract is attached.

9. Abstract of evidence with exhibits taken before the
145 Interstate Commerce Commission in Manufacturers' Railway Co. et al., v. St. Louis, Iron Mountain & Southern Railway Co., et al., I. C. C. No. 3151 (consisting of a single printed volume bound in white cover, 215 pages).

10. Abstract of evidence with exhibits at supplementary hearings before the Interstate Commerce Commission in Manufacturers' Railway Co. et al. v. St. Louis, Iron Mountain & Southern Railway Co. et al. I. C. C. No. 3151 (consisting of a single printed volume bound in blue cover, 503 pages, and appendix).

11. The exhibits (minus the certificate attached to each of them) before the Interstate Commerce Commission not contained in the abstracts referred to in Nos. 9 and 10, but which were filed with the clerk of the Court separate and apart from the said abstracts (the same being the photograph copies filed with the clerk of this Court.)

12. The three reports of the Interstate Commerce Commission in Manufacturers' Railway Co., et al. v. St. Louis, Iron Mountain & Southern Railway Co., et al. I. C. C. No. 3151, dated June 21, 1911, June 21, 1913, and July 10, 1914, respectively.

13. All orders and journal entries relating to the proceedings in this cause.
14. Final decree.
15. Petition for appeal.
16. Assignment of errors.
17. Order allowing appeal.
18. Bond.
19. Election and præcipe for transcript of record.
20. Clerk's certificate.
21. The clerk need not reproduce the large map filed as a part of the record. Counsel for appellants will furnish a sufficient number of copies of said map, not less than fifteen (15), for use on
146 hearing.

22. The clerk shall not print the four volumes constituting the entire record in typewriting of the evidence and proceedings before the Interstate Commerce Commission but the Court or any party shall have the right to refer to the said entire record or any part of the same. If, however, any party does refer to any part of that record, such party shall specifically designate and print as part of, or as an appendix to, his brief such part or parts of such record as he desires the court to examine and consider.

October 28th, 1915.

SIDNEY F. ANDREWS,
Solicitor for Manufacturers' Railway Company, Appellant.
EDWARD A. HAID,
Solicitor for St. Louis Southwestern Railway Company, Appellant.
JNO. W. DAVIS,
Solicitor General for the United States, Appellee.
JOS. W. FOLK,
Counsel for the Interstate Commerce Commission, Intervening Appellee.

147 [Endorsed:] Original. Nagel & Kirby, Attorneys for —.
148 [Endorsed:] File No. 24,761. Supreme Court U. S., October term, 1915. Term No. 487. Manufacturers' Ry. Co. et al., Appellants, vs. The United States et al. Stipulation as to printing record. Filed November 8, 1815.

149 In the District Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4384.

MANUFACTURERS' RAILWAY COMPANY and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervenor.

Appellants' Condensed Statement of a Portion of the Evidence as Herein Shown, for Purpose of Appeal Herein, under Equity Rule 75.

Now come Manufacturers' Railway Company and St. Louis Southwestern Railway Company, Appellants herein, and pursuant to Equity Rule 75, in respect of the Record on Appeal, file this as their condensed statement of such portions of the evidence as are not to be set forth in full, for the purpose of their record upon appeal to the Supreme Court of the United States, in said cause, viz:

1. The attached printed Abstract of Evidence and Proceedings before Byron F. Babbitt, Esq., Special Examiner, (which is made part hereof) consists of a statement in condensed form of all the evidence introduced in this Court in this cause, except the evidence introduced before the Interstate Commerce Commission, which last named evidence, is called for in said Abstract and is covered
150 by point "2" hereof, and except the reports or opinions and order of said Commission, which are also called for in said Abstract.

2. Said evidence before the Commission is not stated in condensed form for the purpose of this appeal, because Appellants have contended in this cause, and will contend on appeal, that there was no substantial evidence before the Commission to sustain certain of the conclusions, and Counsel therefore deem it necessary that said evidence before the Commission be set forth in full, by transmitting the original transcript thereof, together with a copy of the Abstracts thereof which were filed with said Commission.

3. Said Reports, Opinions, and orders of said Commission, are not set forth herein, being contained in full in the answer herein of said Commission, and therefore a part of the Record proper herein.

SIDNEY F. ANDREWS,
Solicitor for Appellant, Manufacturers' Railway Company.
S. H. WEST &
E. A. HAID,
Solicitors for Appellants, Intervening Shippers.

Approved.
ELMER B. ADAMS,
Circuit Judge.

Service acknowledged. Ten days' notice waived. No objections to condensed statement referred to and no amendments to propose.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
JOSEPH W. FOLK,
Counsel Interstate Commerce Commission,
By ARTHUR L. OLIVER, *U. S. Att'y.*

May 11th, 1915.

151 [Endorsed:] No. 4384. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. Manufacturers' Ry. Co. et al., against United States. Lodged with clerk May 11", 1915. W. W. Nall, clerk. Filed May 12, 1915. W. W. Nall, clerk.

I, W. W. Nall, Clerk of the United States District Court for Eastern Division of Eastern Judicial District of Missouri, hereby certify that the exhibit hereto attached is the original Condensed Statement of a portion of the Evidence, under equity Rule 75, filed in cause No. 4384 Manufacturers' Railway Company et al., versus United States of America, et al., in said Court, which (under order of the District Court) is transmitted to the Clerk of the Supreme Court as a part of the transcript and record upon appeal in said cause certified as of this date.

Witness my hand and the seal of said Court, this 25th day of May, A. D. 1915.

[Seal of the United States District Court, Missouri.]

W. W. NALL, *Clerk.*

[Canceled 10-cent Revenue Stamp.]

IN THE

District Court of the United States,

IN AND FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF MISSOURI.

MANUFACTURERS RAILWAY COMPANY, AND ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent,

INTERSTATE COMMERCE COMMISSION,
Intervenor.

No. 4,384.

ABSTRACT OF EVIDENCE.

Pursuant to his appointment in the above entitled cause, Special Examiner Byron F. Babbitt, Esq., proceeded on February 15, 1915, to take such proofs as might be offered therein.

There appeared before him: Sidney F. Andrews, Esq., on behalf of the Manufacturers' Railway Company; Messrs. E. A. Haid and Samuel H. West on behalf of the St. Louis Southwestern Railway Company; Hon. Joseph W. Folk, Chief Counsel for the Interstate Commerce Commission, and Blackburn Esterline, Esq.,

Special Assistant Attorney General, on behalf of the United States.

Marginal Nos. refer to pages of Transcript Proceedings before Examiner.

Page 2

Mr. Andrews: I would like to make the following statement for the record:

On or about February 5, 1913, the Manufacturers' Railway Company issued and filed with the Interstate Commerce Commission, effective March 17, 1913, its tariff entitled, "St. Louis-East St. Louis Terminal Lines' Switching Tariff" No. 1-F, I. C. C. No. 973, which provided for the assessment and collection by it of a switching rate of $4.50 per car for its services in transporting said cars to or from industries located on its line of railway within the City of St. Louis, to or from its connections with the St. Louis Transfer Railway Company; that on or about the 7th day of December, 1913, the petitioner, St. Louis Southwestern Railway Company, published and filed with the Interstate Commerce Commission, to become effective January 7, 1914, a tariff known as Supplement No. 5 to local tariff No. 6188 of the St. Louis Southwestern Railway Company, I. C. C. No. 3219, which, amongst other things, provided that on all carload traffic originating at competitive points on its line of railway, or on the line of railway of its connections, and transported over its line of railway destined to warehouses, factories, or industries located on the line of railway of the Manufacturers' Railway Company within the City of St. Louis, and on all competitive traffic originating at warehouses,

Page 3

factories, or industries located on the line of railway of the Manufacturers' Railway Company and destined to points located on the line of the railway of the St. Louis Southwestern Railway Company, or its connections, and transported over the line of railway of the St. Louis Southwestern Railway Company, the St. Louis Southwestern Railway Company would pay the

charges of the Manufacturers' Railway Company for switching said traffic to or from the connection of the St. Louis Transfer Railway Company with the Manufacturers' Railway Company from or to the warehouses, factories or industries located on the line of railway of the Manufacturers' Railway Company. This tariff of the St. Louis Southwestern Railway Company, together with the tariff of similar effect, published by the Chicago, Peoria & St. Louis Railroad Company, was suspended by the Commission.

Under date of July 10, 1914, the Commission entered and subsequently caused to be served on the St. Louis Southwestern Railway Company and the Chicago, Peoria & St. Louis Railroad Company an order commanding said carriers to cancel, on or before November 7, 1914, the rates, charges, etc., stated in their said tariff. By the terms of said orders certain reports containing the findings of fact and conclusions thereon of the Commission in the case entitled, "Manufacturers' Railway Company et al. v. St. Louis, Iron Mountain & Southern Railway et al.," I. C. C. Docket No. 3151, were made part of said order; whereupon the St. Louis Southwestern Railway Company joined with the Manufacturers' Railway Company in a bill filed in the District Court of this District asking the Court to set aside
Page 4 and annul the said order of the Commission, so far as applicable to the said St. Louis Southwestern Railway Company.

Among other reasons for such action, the Manufacturers' Railway Company alleged that said order of the Commission prohibited the St. Louis Southwestern Railway Company from paying to it as great a sum as $4.50 per car for its said switching services, and further, in effect averred that said Commission had overstepped the constitutional limit by making the rate to

be paid it by the St. Louis Southwestern Railway Company so unreasonably low that the Manufacturers' Railway Company is deprived of its property without due process of law, and its property under said order would be taken for public use without just compensation, all in violation of the Fifth Amendment of the Constitution of the United States, or, in other words, that the payment to the Manufacturers' Railway Company of less than $4.50 per car is not and will not be sufficient to pay the cost of the transportation performed by it and yield it a just and fair return upon the value of the property used by it in said transportation, and that, therefore, said order is confiscatory.

This is the issue upon which evidence is to be submitted at this hearing.

As stated by the Supreme Court in the Minnesota Rate Cases, the basis of calculation is the fair value of the property used for the convenience of the public, or what the Company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used for the public.

ge 5 The petitioner, Manufacturers' Railway Company, therefore proposes to show the present value of its property devoted to the public use, and the value thereof, used in the movement of interstate commerce; the proportion of the Company's operating costs attributable to said commerce, and the net revenues it would receive were $4.50 per car paid it on all cars moving in interstate commerce interchanged by it with its connections.

Gov. Folk: The Interstate Commerce Commission objects to any facts stated above inconsistent with the facts found by it and set out in its several reports, exhibits to its answer in this cause in the proceeding

known as No. 3151 before the Commission, which was brought by the Manufacturers' Railway Company against the St. Louis Southwestern Railway Company and other carriers, by which proceeding the Manufacturers' Railway Company sought to have the Interstate Commerce Commission order the St. Louis Southwestern Railway Company and other carriers to make allowances to said Manufacturers' Railway Company of $4.50 per car.

That while said cause was pending and undetermined before the Interstate Commerce Commission the St. Louis Southwestern Railway Company filed its tariffs mentioned in the statement of Mr. Andrews above, whereby it proposed to make an allowance to said Manufacturers' Railway of $4.50 per car. That said tariff was by the Interstate Commerce Commission suspended under the authority of the Act to regulate commerce.
That the Interstate Commerce later found, and so ordered, that the rates to points along the line of the Manufacturers' Railway should not exceed the St. Louis rates by more than $2.50. That if said order so made in Cause No. 3151 before the Commission be lawful, it is valid and binding upon said St. Louis Southwestern Railway Company, and its tariff filed as aforesaid is thereby rendered unlawful and void. After said order No. 3151 goes into effect no allowances may lawfully be made by said St. Louis Southwestern Railway Company, or other trunk lines, to said Manufacturers' Railway, and all amounts received by said Manufacturers' Railway from said trunk lines must be in the form of divisions of the through rate. That the Interstate Commerce Commission has not passed upon a question of division of the through rate, but the matter of divisions has been reserved by the Interstate

Commerce Commission for future consideration, should the necessity for such consideration arise.

The Interstate Commerce Commission objects to any evidence being taken in this cause for the reason that the Court in a proceeding to annul an order of the Interstate Commerce Commission has no lawful authority to hear or consider any evidence other than the record of the evidence before the Interstate Commerce Commission. All questions of fact are foreclosed by the finding of the Commission based upon substantial evidence. The Court has no power to make an order with reference to rates, neither has it lawful authority to direct the Interstate Commerce Commission as to what
Page 7 order it shall enter. The authority of the Court is confined to passing upon the legality of the order that was made, and has not any jurisdiction as to the legality or illegality of orders that the Interstate Commerce Commission did not make and refused to make. And with respect to the order that was made, the only questions to be determined by the Court are whether the Interstate Commerce Commission had jurisdiction of the tariffs and subject-matter; whether there was a fair hearing; whether the order was based upon substantial evidence, and whether it violates any constitutional rights of the parties.

With respect to the allegation of confiscation the Interstate Commerce Commission contends that the Court can hear no evidence upon confiscation that was not presented to the Commission; that an allegation of confiscation is in effect an allegation of the unreasonableness of the rate, and these matters are within the exclusive primary jurisdiction of the Interstate Commerce Commission.

Mr. Esterline: On behalf of the United States, I

wish to make and enter to the evidence proposed the following objections:

First: The petitioners are seeking to put before the Court evidence which was not before the Interstate Commerce Commission, and to make before the Court, for the purpose of destroying the order of the Interstate Commerce Commission, a record other than and different from the record before the Commission upon which the order was based.

Second: The Court is without power and authority
8 to consider said evidence, or any part of the same, because the subject-matter thereof is within the exclusive jurisdiction of the Interstate Commerce Commission to hear and determine.

Third: The parties may not withhold evidence from the Commission and later offer the same before the Court after an adverse order has been entered by the Commission.

Fourth: The said evidence proposed does not bear on the power of the Interstate Commerce Commission to make and enter said order, but relates to the wisdom and expediency of the said order as entered.

Fifth: The question of the reasonableness of the charge is a question of fact to be heard and determined by the Interstate Commerce Commission, and any evidence upon that question should first be submitted to and determined by the Interstate Commerce Commission.

Sixth: The said evidence proposed to be offered is for the purpose of showing the effect of the said order of the Interstate Commerce Commission, and is otherwise incompetent, irrelevant and immaterial.

Note: It is agreed that the foregoing objections and each of them shall apply to the entire evidence of each witness produced and sworn, and each and every part

of such evidence, without repetition thereof, when and as such witness is produced and sworn.

Gov. Folk: And it is understood that the objection which was made by me shall apply to the testimony of each witness and to each question and answer of each witness.

Page 9 **John W. Kendrick,** a witness called by petitioner, Manufacturers' Railway Company, being duly sworn, testified:

Direct Examination, by Mr. Andrews: My name is John W. Kendrick, residence Chicago, Illinois. I am a railway expert; that is, I make examinations of railways for bankers or for individuals. I make reports upon railways, and occasionally make valuations of railways as in this case. I also have an office in New York City.

Before I took up this work of examining and valuing railway properties, I was engaged in the railroad business. I was vice-president of the Atchison, Topeka & Santa Fe Railway for ten years, in charge of the
Page 10 operating department. I was in the service of the Northern Pacific for twenty-two years; I commenced that service in the engineering department in 1879, served in various capacities up to 1887, when I was made chief engineer of the railway; in 1893 I was made general manager, and in 1897 vice-president, in which capacity I served until I left the road in 1901. While vice-president I was in charge of operation. I was the chief executive of the road in the West.

I have been engaged in this work of making reports and valuations of railway property for three years, during which I made a valuation of about 900 miles of the Canadian Pacific Railway in the Province of Quebec, a valuation of the Mississippi Valley & Bonne

Terre Railway southeast of St. Louis, and one or two valuations in connection with other roads. In general, my experience in this line in relation to such properties has been extensive beyond what I have indicated. I have had very active railroad experience extending for over thirty years in the construction and operation of railroads.

I have been engaged or employed by the Manufacturers' Railway Company to value its railway property in the City of St. Louis, and have made such valuation as of January 1, 1915. I have prepared a map showing that property, and now produce it.

(Said map was then offered as Exhibit No. 1 to Mr.
Page 12 Kendrick's testimony and was marked accordingly.)

This map was made under my direction. I have been engaged for several weeks in the work of valuing the property, have been over it frequently, am familiar with the tracks and the situation, and the map is a correct representation of the railway and its property.

On the map, Exhibit 1, the railway is represented in different colors, which I will explain. The map shows the property of the Manufacturers' Railway Company between LaSalle Street on the north and a point near Potomac Street on the south between Thirteenth Street on the west and the Mississippi River on the east, in the City of St. Louis. The various tracks are shown in distinctive colors as follows:

Page 13 Green represents tracks constructed upon the right-of-way granted by franchises or ordinances of the City of St. Louis, covering the use of public streets and alleys, and river front or wharf property.

Yellow represents tracks pertaining to or serving industries, and accessible by, or for the use of, the public and constructed upon lands which are leased to the Manufacturers' Railway Company.

Brown designates tracks constructed upon property which the Manufacturers' Railway Company holds by virtue of easements or title conveying the property for the uses of the Railway; these tracks are accessible by the public or used for its benefit.

Red represents tracks owned by the Anheuser-Busch Brewing Association, a considerable portion of which may be and are used by other shippers. Concerning those tracks extending southwardly from Arsenal to Utah Streets, across or through United States Government Arsenal grounds, the title to this easement vests in Anheuser-Busch Brewing Association by virtue of a congressional enactment, the date of which I don't know, but the cost of the easement, $32,000.00, was defrayed by the Manufacturers' Railway Company, and a bill is now in preparation for the purpose of transferring title by congressional enactment to the Manufacturers' Railway, which paid for it; the proposed transfer has the approval of the War Department.

Page 14 **Mr. Esterline** moved to strike out the answer relating to the easement through the Arsenal property on the ground "that it is hearsay and not the best evidence of the title and ownership of the property, and otherwise incompetent, irrelevent and immaterial."

The witness resuming: In making a valuation of the property of the Railroad I have endeavored to conform to the prescribed classification of the Railway valuation divisions of the Interstate Commerce Commission. The forms of accounting or classifications of accounts prescribed by the valuation divisions of the Interstate Commerce Commission have been adhered to.

Gov. Folk: "That is objected to as calling for a conclusion."

The witness resuming: I was not able to determine the original cost of the Railway. The valuation made is on the basis of or pertaining to the cost of reproduction less depreciation, and the present value; I was not able to determine the original cost because the records of the Company are not in such form as to make it possible; in fact that is true of the records of most railroad
Page 15 companies. Sometimes they are destroyed by fire, and of course years ago the necessity for keeping detailed records was not recognized.

My present valuation was made on the basis of the cost of reproduction less depreciation. I have not included in it any amount for the cost of organization or for legal expense of any kind. I mean by that, that in estimating the present value of the property, I have not included either the organization expense or the legal expenses of organization. The present legal expenses, so far as I know, are part of the operating expenses at the present time. I know nothing about condemnation proceedings. This does not include anything for legal expenses or for the expense of condemnation.

Page 16 "**Mr. Andrews**: Q. I wish you would please describe the railroad in detail for the record."

A. "As a matter of convenience, the road was divided, for the purposes of valuation, into various sections designated as the High or Pestalozzi Street Line, Dorcas Street Line and Second Street Line.

The High or Pestalozzi Line extends from the River Yard on the Mississippi River front to the brewing plant and stock house of the Anheuser-Busch Brewing Association, located west of Ninth Street. West of Second Street it lies in or south of Pestalozzi Street. It rises by a sharp grade above the tracks in the River Yard to a height giving clearance over the tracks of

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the St. Louis, Iron Mountain & Southern Railway, St. Louis Transfer Railway Company, and the First Street Yard of the Manufacturers' Railway, and descends to the surface of the ground at about 300 feet south of Second Street. The length of this Line measured from its head block in the River Yard to the building line, at Ninth Street, is 1.225 miles.

Connected with this line are seven yards, as follows:

"River Yard," located east of First Street between Barton and Arsenal Street; 26 tracks, 24,932 lineal feet.

"First Street Yard," between Dorcas, Arsenal, First and Second Streets; 36 tracks, 19,225 lineal feet.

Page 17 "Shipping Yard," south of High Line, between Second and Broadway; 19 tracks, 10,439 lineal feet.

"St. Louis Refrigerator Car Company Yard," north of Shipping Yard and adjacent to it; 7 tracks, 1,633 lineal feet.

"Broadway Yard," opposite Pestalozzi Street on Broadway; 6 tracks, 2,159 lineal feet.

"Seventh Street Yard," in block 884, at Pestalozzi and Seventh Streets; 2 tracks, 790 lineal feet.

"Ninth Street Yard," corner of Ninth and Pestalozzi Streets; 7 tracks, 4,111 feet.

The "River Yard" is used particularly as a classification or distributing yard; and at its southern end for interchange with the St. Louis, Iron Mountain & Southern Railway; and at its northern end for interchange with the St. Louis Transfer Railway Company. The shop yards are included within the River Yard. The High Line at a point just east of Second Street affords the only connection between the River Yard and the First Street Yard next described.

The "First Street Yard" is used to serve the plant of the St. Louis Basket & Box Company, the ice plant

of the Anheuser-Busch Brewing Association, and the material yard of the Railway Company. Its connection with the High Line occurs at the west end of the viaduct. Access to this yard from Second Street is
age 18 had by means of a roadway paved with granite blocks, and to some of the tracks in the east side of the yard by a paved roadway from DeKalb Street. The tracks are provided with crossing planks so that teams may pass from one part of the yard to the other along the east side of the ice plant and along the front of the St. Louis Basket & Box Company.

"Shipping Yard": The lead track of this Yard leaves the High Line at a point just south of Second Street. It occupies a large part of the space lying between the High Line on the north, Arsenal Street on the South, Broadway on the west and the buildings located on the west side of Second Street. Access to this Yard is had from both Arsenal and Second Streets over roadways paved with granite blocks. All tracks on the east end of the Yard are provided with crossing planks, which, with the granite pavement on the south and west side of the Yard permits access to the granite platforms lying between the yard tracks.

"**Gov. Folk**: Q. You are reading from a statement prepared by yourself? A. Yes, sir."

"Most of the tracks and the platforms between them in this yard are covered by a shed and are principally used in connection with the business of the Anheuser-Busch Brewing Association."

"St. Louis Refrigerator Car Company Yard": The tracks serving the plant of the St. Louis Refrigerator Car Company leave the High Line in Second Street and serve only its plant, there being no access from the street to this yard.

Page 19 "Broadway Yard": The Broadway Yard is situated east of Broadway and north of the High Line; access is had to this yard on the granite pavement from Broadway; the team tracks in this yard are used by the general public, and they serve as well the distributing stations of the St. Louis Dressed Beef and Provision Company and Morris & Company, which are located on the east side of Broadway, adjoining the yard. The yard between the team tracks is paved with granite blocks, making all the tracks accessible for general business.

"Seventh Street Yard": This yard is located on the east side of Seventh Street, south of the High Line. The tracks contained therein are accessible through Seventh Street and from Pestalozzi Street through the paved alley in block 884. The two tracks in this yard are used largely as team tracks for coal dealers.

"Ninth Street Yard": This consists of the tracks west of Ninth Street, serving the brewing plant and stock house of the Anheuser-Busch Brewing Association, and of a track running south along the west side of Ninth Street to Wyoming Street, this latter track occupying what ordinarily is the sidewalk space, is accessible at any point along its length from Ninth Street.

Page 20 The brewery plants located south of Arsenal Street use it for loading directly from their buildings, and it is not used by the public.

Dorcas Street Line: The Dorcas Street Line extends from Utah Street on the south practically parallel with the tracks of the St. Louis, Iron Mountain & Southern Railway Company to a point about 300 feet south of Dorcas Street, where it curves into this latter street, which it follows to Ninth Street; from Ninth Street to its terminus in Twelfth Street, it lies between Lynch

and Pestalozzi Streets. From Utah Street to the entrance of the Thirteenth Street Yard, the distance is 1.003 miles.

Connected with this line are four yards, having the number of tracks and length in lineal feet of tracks respectively as follows: Foot of Dorcas Street, between Dorcas and First Streets, 6 tracks, 2,568 lineal feet; Lyon Street Yard, on Dorcas opposite Lyon, 5 tracks, 1,477 lineal feet; Eleventh Street Yard, south of Lynch between Ninth and Eleventh, 22 tracks, 8,198 lineal feet; Thirteenth Street Yard, Thirteenth and Lynch, 7 tracks, 3,033 lineal feet.

"Foot of Dorcas Street Tracks": These tracks serve the Busch Glass Works, and the plant of the American Car & Foundry Company.

"Lyon Street Yard": Access to this yard is had from Dorcas Street near Lyon, and from Second Street, over paved roadways, and it is generally used by the public. The space between the tracks is paved with cinders, and the tracks are provided with crossing planks so that teams may reach any portion of the yard.

"Eleventh Street Yard": The tracks in the east side are very generally used by the public; access is had to all parts of the yard over paved roadways, the tracks being provided with suitable crossings to facilitate communication between all portions of the yard. Portions of the track serve the elevators and part of the bottling works of the Anheuser-Busch Brewing Association.

"Thirteenth Street Yard": This entire yard is paved with bricks, which affords easy access to all tracks therein, which serve the bottling plant of the Anheuser-Busch Brewing Association. The general level of this yard is about 15 feet below that of Thir-

teenth Street, and the tracks are not used by the public to any great extent.

Second Street Line: This occupies Second Street from a point about midway between Potomac and Zepp Streets on the South to LaSalle Street on the north, its length being 2.214 miles. Connected with this line are three yards as follows: Second and Dorcas Street Yard, 5 tracks, 2,468 lineal feet; Park Avenue Yard, 6 tracks, 2,780 lineal feet; Rutger Street Yard, Rutger and Second Streets, 7 tracks, 1,347 lineal feet.

Page 22 Second and Dorcas Street Yard, located northeast of the intersection of those streets; cinder ballast is used, and spaces between tracks are so paved and provided with crossing planks as to facilitate entrance from Second Street. This yard is used by the public to some extent.

Park Avenue Yard is accessible from Kosciusko Street and Park Avenue, is a public facility, is located south of Park Avenue between the tracks of the Iron Mountain in First Street and Kosciusko. The space between the tracks is at present paved with cinders, but granite blocks have been unloaded on the site with the evident intention of paving in the same manner as the Trudeau Street team tracks have been paved.

Rutger Street Yard: Two of the tracks at Rutger Street serve the freight station used by the Manufacturers' Railway Company located on the south side of Rutger Street west of Second Street. The three remaining tracks are used principally for the delivery of coal to teams. They are very generally used by the public.

Page 23 Second Street Industrial and Team Tracks: In addition to the above yards there are various short industrial spurs, aggregating 8,875 lineal feet, serving manufacturing plants and lumber yards located on or near

Second Street, as follows: Stock yard and team track, two tracks located at Second and Zepp Streets, 607 lineal feet; South Side Lumber Company industrial tracks, opposite Cave Street, 2 tracks, 593 lineal feet; Diesel Engine Company, Second and Utah Streets, lead to industrial tracks, 1 track, 90 lineal feet; Utah Street team tracks, Second and Utah Streets, 2 tracks, 486 lineal feet; Anheuser-Busch Brewing Association wash house, Dorcas and Arsenal Streets, 2 tracks, 762 lineal feet; connection Second Street line to High Line, 1 track, 257 lineal feet; Klauber Junk Yard and team track, Second and Louisa Streets, 1 track, 300 lineal feet; St. Louis Lumber Company industrial tracks, Second and Barton Streets, 2 tracks, 1,667 lineal feet; Barton Street team tracks, Second and Barton Streets, 2 tracks, 491 lineal feet; Trudeau Street team tracks, Second and Trudeau Streets, 2 tracks, 554 lineal feet; Heibel Cooperage Company, Second and Barry, 1 track, 242 lineal feet; Western Sash, Weight & Foundry Company industrial track, Second and Miller Streets, 1 track, 473 lineal feet; John Nooter Boiler Works industrial track, 1 track, included in Park Avenue Yard; Rutger Street track, Second and Rutger, leads to station and team tracks, 1 track, 690 lineal feet; N. K. Fairbanks industrial track, Third and Convent, 1 track, 409 lineal feet; Laclede Gas Company siding, Second and Convent, 1 track and 1 cross-over, 637 lineal feet; LaSalle Street public team track, Second and LaSalle, 1 siding in Second Street; 614 lineal feet; total Second Street industrial and team tracks, 8,875 lineal feet. All of the team tracks are accessible to the public from adjoining streets, those at Trudeau Street being paved with granite blocks.

"**Mr. Esterline**: I would like to make a statement

on the record: Counsel for respondents calls attention to the fact that the witness is reading his evidence from a book or record which he holds in his possession as he
Page 25 is testifying, and is not giving his evidence from other sources or of his own knowledge.

Mr. Andrews: As to the facts that you have stated in answer to the prior question, are these facts your own knowledge, Mr. Kendrick? A. They are.

Q. You have personally prepared this statement that you have read from? A. I have."

Mr. Esterline then asked the witness certain questions, in answer to which he testified: I was employed to do this work prior to the 1st of January. Before that time I knew nothing about the Manufacturers' Railway, so far as concerns these particular details about which I am now testifying, although I was here about a year ago in connection with the Manufacturers' Railway, and I knew it, in a way. I knew there was such a Railway, but had not concerned myself about the details as to which I am now testifying. When I testify that a certain track or spur is used by the public, it is true to a certain extent that I am basing that answer more or less on what has been told me, rather than
Page 26 on my experience with this Railroad; but I base it also on my own observation. I have been there practically upon the ground for a month, but I have not seen the way-bills of the cars; I have merely seen the cars there, and from that observation I have drawn my conclusion.

"**Mr. Esterline:** I move to strike out the testimony of the witness on the ground that these team tracks or any of these yard tracks are not tracks used by the public."

Gov. Folk then asked the witness certain questions

in answer to which he testified: I have read the reports of the Interstate Commerce Commission about
age 27 the description of the Railway and its branches and lines and the uses to which they are put. I am unable to answer your question whether my conclusions concerning those matters agree with the conclusions of the Interstate Commerce Commission as evidenced in its reports, nor can I point wherein or in what respect my conclusions differ from the conclusions of the Interstate Commerce Commission concerning the matters about which I have testified. I have not approached the problem from that standpoint; merely ascertaining the facts as they were put before me. I am not prepared to say that any of the findings of fact that I read in the report of the Interstate Commerce Commission on those matters are wrong.

Examination by Mr. Andrews continued: I have very particularly observed, myself, in regard to whether the tracks referred to by me are accessible or non-accessible; in that regard I base my statement on my own personal observation.

age 28 **Examination by Mr. Esterline:** But whether the particular cars on those tracks are for outside shippers or for local shippers I have no idea about or the numbers of them per day, week or month. As to whether my conclusion that they are public team tracks is just a general conclusion from my having been around there and looked at them; and as to the traffic that moves over those tracks, I have some knowledge, i. e., if I see beef being loaded I know it is beef and not the business of the Brewing Association; I know it came from St. Louis, but don't know where it is going. I see the vehicles of the packing companies coming to the cars and either taking from the cars or putting into

Page 29 them, packing house products, and therefore I am sure that is a public team track, but I base my certainty on the fact that I see a car there from which beef is being unloaded, or anything else of that character, but I do not pretend to say of my own knowledge where the cars came from or anything of that kind. I have not seen the bills of lading.

Examination by Gov. Folk: I have not considered whether the shipments of the Anheuser-Busch Brewing Association are public business. I spoke of the shipments of beef as being public business, but see no reason why the business of Anheuser-Busch Brewing Association is any different than the business of the beef company; it is engaged in business and ships over the Railroad, which is a common carrier. I never made any estimates as to the business of the different shippers, nor did I take into consideration the earnings of the road in valuing it. I took the present physical valuation.

"**Mr. Andrews:** Do I understand, gentlemen, that you claim that the Manufacturers' Railway is not a common carrier?

Mr. Esterline: I claim it is not as to certain of—

ıge 30 **Mr. Andrews:** The Interstate Commerce Commission, I understand, admits through its answer that it is.

Governor Folk: The Interstate Commerce Commission admits it is a common carrier for the purposes indicated in its reports. While it is a common carrier, the majority of the stock of the Manufacturers' Railway Company is owned by the holders of the majority of stock in the Anheuser-Busch Brewing Association,

under which circumstances the divisions or allowances made to the Manufacturers' Railway by the trunk lines might be so excessive as to operate as a rebate to the Anheuser-Busch Brewing Association."

Examination by Mr. Andrews continued: I used the memorandum referred to and from which I read, to refresh my recollection.

Q. Please describe the character of the tracks and the necessity for the kind of construction you found. A. The Railway possesses certain construction features that may be called "principal." On the High Line as described, these consist of the viaduct at its eastern end 2,156 feet long, costing $112,247.79; the shop and engine house, costing $124,630.09; the freight shed, driveways, retaining wall, tracks, etc., in the shipping yard, costing $142,678.48 exclusive of real estate and engineering; the concrete retaining wall at the Broadway yards; construction of the Ninth Street yards through streets,
ge 31 with large areas paved with granite blocks and bricks on concrete foundations.

The construction features on the Dorcas Street line are the Thirteenth Street yards, costing approximately $55,527.58, exclusive of real estate and engineering, the Eleventh Street yard, and the construction of the line from First to Ninth Streets with 141-pound girder rail, the greater part of it through a street paved with granite blocks on a concrete foundation.

The principal feature on the Second Street line is the construction of a line about 2¼ miles long through a street paved generally with macadam, and in some portions with granite blocks on concrete foundations. The cost of track structure on paved streets and over paved areas is high, amounting to about $40,000.00 per mile under certain conditions. The usual cost of a track

structure, including stone ballast, under normal conditions, is $10,500.00 per mile without any allowance for turn-outs or crossings, meaning by "usual construction" that which is followed by the railroads in the country, or outside of terminals.

On the Dorcas Street line between First Street and Broadway, the nine-inch girder rails were used, what
Page 32 we call 141-pound rail, i. e., 141 pounds per yard, the weight of rail by usage being always given in pounds per yard. The cost of the splices is $3.80 per joint.

Examination by Gov. Folk: The weight of rail is by usage given in pounds per yard; The Pennsylvania Railroad, for instance, quite commonly uses 100-pound rail; 141-pound rail is heavier than is usually used for trunk lines, so the weight given, 141 pounds, indicates unusually heavy rail.

Direct examination by Mr. Andrews resumed: The track on Ninth Street between Pestalozzi and Wyoming consists of 100-pound running rails, to which are bolted 100-pound inside guard rails, with cast steel fillers at intervals of three feet, all constructed with brick and granite block pavements on a concrete foundation. In the Ninth Street yard the track consists principally of 7-inch girder running rail bolted to a shanghai guard rail carried on wide shallow steel channel ties, on a concrete foundation. The Thirteenth Street yard is laid with 85-pound rail, the entire area of the yard being covered with brick pavement, both track and pavement being on a concrete base. The cost of the special track work for turn-outs and crossings occasioned by this construction is very high. As to the
Page 33 reason for adopting the construction, which is manifestly so expensive, any track structure laid in a paved street is subject to regulation by the Municipal officials

as to the character of material used. They generally demand girder rail construction. In order to protect street traffic, the city officials demand a track structure in the paved street that may be crossed at any point in a street, and further, it must be so arranged that vehicles traveling along the track may turn into and from it. This, together with requirements of operation that some device be used to hold the edge of the paving blocks a sufficient distance from the running rails to allow the passage of the flanges of the car wheels, necessitates either a girder rail especially made to meet these conditions, or guard rails spaced at the proper distance inside of each of the running rails. The girge 34 der construction, though expensive, costs less than the latter construction. The Chicago street railways are required to use girder rails weighing 129 pounds per yard; New York City also requires the use of girder rails on all surface lines; all of the street railways in St. Louis are required to use it.

The district in which the lines mentioned are operated is a business and manufacturing district, and there is a great deal of heavy truck traffic on the streets. Again, the yards of the Manufacturers' Railway are constructed for the most part with new rails weighing 85 pounds to the yard; 91% of the entire railway has been constructed of such rails, and first-class ties and good ballast have been used.

It is usual in the construction of such facilities by a railroad having considerable mileage, to use for the interior tracks of its yards, re-laying rails which have been worn in the main track and removed from it. The Manufacturers' Railway, having no mileage from which to draw rails of that kind, was obliged to buy new ones, because I know personally that it is impracticable to buy suitable and satisfactory re-laying rails from other

roads for such purposes, to any material advantage, as compared with the cost of new rails, as the roads themselves have use for them. Good rails were essential for the purpose of the Manufacturers' Railway, because the grades on the Pestalozzi Street or High Line and the Dorcas Street Line are very heavy, the track mounting about 234 feet per mile, or at the rate of about 4½ feet per 100 feet. The railway in general was built upon a slope of ground extending from Thirteenth Street toward the Mississippi River, and it was necessary to construct shelves or benches for the purpose of the different yards, and that necessitated the construction of retaining walls for the purpose of supporting the streets where the grade of the streets was above the grade of the yards as established, or on the other hand, to sustain the grade of the yards where the grade of the street was lower than the grade of the yards.

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The River Yard is of considerable length and contains about five miles of track; nevertheless, it is not larger than necessary for the business of the road, and at all times during the past month its tracks have been fairly filled by cars. At times when business is heavier than at present, it is stated that there is congestion, and I have no doubt that is true.

"**Mr. Esterline:** I move to strike out that statement about the congestion, and not doubting that it is true, as hearsay and a conclusion."

The witness resuming: The connections with the St. Louis Transfer Railway and the St. Louis Iron Mountain & Southern Railway in the River Yard necessitated the construction of a viaduct for the purpose of taking the High Line over the tracks of the Iron Mountain and thus forming a connection between those por-

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tions of the Manufacturers' Railway lying west of First Street, and the River Yard lying east of First Street, on the river bank.

This viaduct was necessarily expensive; the underlying rock supporting the masonry of its western portion dips down just east of the western approach, so that most of the steel columns of the bridge spanning the tracks crossed, and all of the east approach must be supported on piles. These very properly are of reinforced concrete, as it would be unwise to place so important a structure on any other than a permanent foundation. The cost of concrete piles is more than double that of wooden piles. The shipping yard to which reference has been made, has 19 tracks with an aggregate length of 10,439 lineal feet, or 1.977 miles. It is a busy yard at all times, and at certain seasons all of its tracks are fully employed. It is located south of the High Line between Second and Broadway, and is used in connection with Anheuser-Busch Brewery; a freight shed of structural steel covers the entire area in the southern portion of the yard, and lower sheds
Page 37 cover the driveways between the tracks in all but six tracks on the north side. Paved roadways from Second Street and from Arsenal Street in the yard and around the southeast and west portion of it, and between the tracks, are necessary to keep the yard facilities available.

The cost of the work on account of the number of tracks involved, the area covered, and the excavation necessary to secure a yard on a light grade, has been large. The cost to reproduce the excavation with the necessary retaining walls would be $56,768.44. The cost of the freight sheds, driveways, curb and drainage has been $63,272.35. The cost to reproduce the tracks as they now exist would be $22,550.19, making the total

cost to reproduce this yard $142,678.48, exclusive of real estate and engineering.

"**Mr. Andrews**: Please state the methods you have employed in making your valuation. A. Direct blueprints of the maps of the Manufacturers' Railway purporting to show all of the tracks and structures were secured and each track thereon designated by letters, and each switch by a number. This letter and number designation was then marked on each track and switch to which it had been assigned on the map. The purpose of this was not only to facilitate reference in the field notes and estimates, but to verify the accu-
Page 38 racy of the maps and the Company's records. Any tracks or other facilities not shown on the maps were thus located definitely and tracks shown on the maps which had been taken up were noted, and the records corrected as to actual field conditions.

The High Line, Dorcas Street, and Second Street Lines, were measured and each one-hundred-foot station marked on the rail with red paint, both for the convenience of reference and to determine the locations of various structures and length of track.

Each track, main, siding, yard or industrial, was measured separately, and all ties, tie plates and rail braces, actually counted except where the tracks were located in macadam, brick and granite pavements. In such cases the averages of like track actually counted were used to check the records. In all cases the actual count and notes taken in the field were used in estimating, with the exception noted.

The dimensions of all buildings, track and other structures, street pavement, driveways in station grounds, crossings, and drainage systems, were taken in the field. Where office records were not available, and in cases where it was possible, cross-section notes

of ground surface were taken to determine the quantities of graduation to supply the deficiency, or to check the records.

Office Work: All available records showing cross-sections of original ground surface were checked. The plans under which the yards were constructed, when available, were examined and such information as to the condition existing at the time of construction was found and used.

Page 39 Many of the original contracts under which the work was performed were found, which, with the final estimate of the construction engineer, and vouchers for supplies and materials, and the monthly distribution sheets of all labor employed, furnished reliable information for the establishment of unit prices.

None of the quantities of materials, except as to graduation in some cases, were used, however, without checking by careful field work.

These sources of information were supplemented, in cases where neither present conditions nor records were available, by inquiry from those engaged in the actual construction of much of the work. The valuation was arranged to show the High Line, Dorcas Street Line, Second Street Line and the yards located along them, in such a manner that the cost of any particular yard or group of tracks for any account may be ascertained.

In making the estimate of the cost of reproduction the following assumptions have been made:

1. That all streets, buildings and other structures, and the physical characteristics of the land adjoining and in the vicinity of the tracks and other structures of the Manufacturers' Railway, are in the condition as of the first of January, 1915, the date of this valuation.

2. That the ground surface and condition of the space occupied by all of the structures of the Manufacturers' Railway are as they existed at the time the work was actually constructed.

Page 40 3. That the cost of reproduction is the amount of money that must be expended to reproduce in kind, new, the structures, machinery, tools and all appurtenances of the Railway as of January 1, 1915, under the conditions as to cost of labor, material, land, and all other essentials, as of the date of the valuation.

The depreciation of the property on January 1, 1915, represents the loss in value due to wear and tear, decay, or obsolescence, which the maintenance of the property has not overcome, between the time of its construction or installation and January 1, 1915.

The appreciation of the property represents the gain in the value of the structure, such as embankment or excavation, due to seasoning, settling, solidification, or other beneficial processes which occurred between the time of its construction and January 1, 1915.

The present value of the property is the remainder after deducting from the cost of reproduction new as stipulated in "3," the depreciation which has occurred between the time of the installation of the structure, machine, tool, or appurtenance, and January 1, 1915, or by adding to the cost of reproduction the gain in value due to appreciation during the same period.

The classifications of "general" and "primary" accounts have been made in accordance with the account-
41 ing forms prescribed by the Interstate Commerce Commission issued and made effective July 1, 1914.

Engineering: The records of the Company show that the actual cost of engineering has been ten per cent of the cost of all work constructed, not including costs incident to obtaining real estate.

The cost of this item in connection with a railroad of this character is higher than on railroads a larger portion of whose mileage is main line, outside of thickly populated districts. The preparation of maps in land areas subdivided as city property, and covered by many buildings and structures which must be located by survey and shown on maps to intelligently plan the location of lines and dimensions of needed structures, is expensive. The cost of detailed drawings for yards and special work in paved areas also is much larger within large cities than in smaller or rural communities. The addition of ten per cent on all "road" items, Nos. 3 to 47, both inclusive, to cover the cost of engineering, is based upon these considerations.

Interest during construction: It has been estimated that if this enterprise should be undertaken at the present time and consummated for the purpose of reproducing the railway as it now stands, in its entirety, eighteen months would be required for its completion. Therefore, interest has been computed at the rate of five per cent per annum upon the value of the property as determined for an average of nine months.

Page 42 "**Mr. Andrews**: Q. Have you prepared statements of details of accounts by numbers according to the classification of the Valuation Division of the Interstate Commerce Commission, for all property owned or operated by the Manufacturers' Railway, as of January 1, 1915? A. I have.

Gov. Folk: That is objected to as calling for a conclusion of the witness.

Mr. Andrews: Q. Please file that as your Exhibit No. 2, and explain it."

(The exhibit referred to was thereupon marked Exhibit No. 2.)

ACCOUNT 2. LAND FOR TRANSPORTATION PURPOSES.
3 SHEETS—SHEET 1.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
2	**LAND FOR TRANSPORTATION PURPOSES.**						
	DEEDED LAND.						
	River Yard	Sq. ft.	281,317	$1.00	$281,317.00		
	Second Street: Trudeau Team Tracks	Sq. ft.	28,495	1.00	28,495.00		
	Park Ave. Yard	Sq. ft.	104,282	1.50	156,423.00		
	Rutger St. Station and Team Tracks	Sq. ft.	25,157	1.50	37,735.50		
	Stock Yard	Sq. ft.	42,758	.50	21,379.00		
	†Arsenal Yard	Sq. ft.	35,920	....	32,000.00		
					$557,349.50		

†The easement from the United States for the use of this property is now in the name of the Anheuser-Busch Brewing Association, although the property was paid for by the Manufacturers' Railway. A bill is now in preparation for the purpose of transferring the easement title by Congressional enactment to the Manufacturers' Railway. The proposed transfer has the approval of the War Department.

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ACCOUNT 2. LAND FOR TRANSPORTATION PURPOSES.
3 SHEETS—SHEET 2.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
2	LAND FOR TRANSPORTATION PURPOSES. LEASED LAND.						
	*High Line	Sq. ft.	1,380	$2.00	$ 2,760.00		
	†River Yard	Sq. ft.	133,921	1.00	133,921.00		
	†River Yard	Sq. ft.	161,592	1.50	242,388.00		
	*First St. Yard	Sq. ft.	259,584	1.50	389,376.00		
	*Shipping Yard	Sq. ft.	203,984	1.75	356,972.00		
	*St. Louis Rf'g Car Company	Sq. ft.	16,896	1.75	29,568.00		
	*Broadway Yard	Sq. ft.	56,160	1.75	98,280.00		
	*Seventh St. Yard	Sq. ft.	19,460	2.00	38,920.00		
	*Ninth St. Yard	Sq. ft.	29,424	1.75	51,492.00		
	Second Street—						
	*Dorcas and 2d	Sq. ft.	23,221	1.50	34,831.50		
	‡Block 201, Rutger St. Station and Team Track	Sq. ft.	6,357	....	1,500.00		
	Dorcas Line—						
	*Foot of Dorcas	Sq. ft.	10,220	1.50	15,330.00		
	*Lyon St. Yard	Sq. ft.	28,144	1.75	49,252.00		
	*11th St. Yard	Sq. ft.	96,320	1.75	168,560.00		
	*11th St. Yard	Sq. ft.	29,520	1.50	44,280.00		
	*13th St. Yard	Sq. ft.	64,080	1.50	96,120.00		
	*Dorcas St. Line— Main	Sq. ft.	1,056	2.00	2,112.00		
					$1,755,662.50		

*Anheuser-Busch Brewing Association Lease.
†Leased from the City of St. Louis.
‡Leased from Board of Education of St. Louis.

ACCOUNT 2. LAND FOR TRANSPORTATION PURPOSES.
3 SHEETS—SHEET 3.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
2	**LAND FOR TRANSPORTATION PURPOSES.**						
	†LAND USED UNDER FRANCHISE.						
	High Line—						
	River Yard	Sq. ft.	36,737	$ 1.00	$ 36,737.00		
	First St. Yard	Sq. ft.	1,820	1.00	1,820.00		
	Alley, Blk. 883	Sq. ft.	652	2.00	1,304.00		
	Alley, Blk. 884	Sq. ft.	690	2.00	1,380.00		
	In 2d Street	Sq. ft.	2,100	1.50	3,150.00		
	In Broadway	Sq. ft.	960	2.00	1,920.00		
	In 7th Street	Sq. ft.	720	2.00	1,440.00		
	In 9th Street	Sq. ft.	7,668	2.00	15,336.00		
	In 9th Street	Sq. ft.	3,396	1.00	3,396.00		
	Second Street—						
	Main Line	Sq. ft.	22,508	.75	16,881.00		
	Main Line	Sq. ft.	95,696	1.00	95,696.00		
	Main Line	Sq. ft.	66,921	1.50	100,381.50		
	City Blk. 1789	Sq. ft.	180	.75	135.00		
	City Blk. 1791	Sq. ft.	345	.75	258.75		
	In Barton St.	Sq. ft.	1,616	1.00	1,616.00		
	In Third St.	Sq. ft.	720	1.00	720.00		
	In Park Ave.	Sq. ft.	8,052	1.50	12,078.00		
	In Kosciusko St.	Sq. ft.	1,380	1.50	2,070.00		
	In Rutger St.	Sq. ft.	1,840	1.50	2,760.00		
	In Merchant St.	Sq. ft.	4,760	1.50	7,140.00		
	Dorcas and 2d Sts.	Sq. ft.	2,484	1.50	3,726.00		
	Dorcas Street—						
	Foot of Dorcas St.	Sq. ft.	21,086	1.50	31,629.00		
	Main Line	Sq. ft.	16,796	1.75	29,393.00		
	Main Line	Sq. ft.	7,284	2.00	14,568.00		
	In 9th St.	Sq. ft.	756	2.00	1,512.00		
	In 11th St.	Sq. ft.	21,068	1.50	31,602.00		
	In 12th St.	Sq. ft.	7,216	1.50	10,824.00		
	Blocks 1409, 1410	Sq. ft.	1,684	1.75	2,947.00		
	Blocks 2018, 2019	Sq. ft.	1,854	1.75	3,244.50		
					$ 435,664.75	Franchises.	
					1,755,662.50	Leased Land.	
					557,349.50	Deeded Land.	
	Grand Total				**$2,748,676.75**		

†The value of land used under franchise is not included in any of the summaries of this valuation.

ACCOUNT 3. GRADING.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
3	GRADING.						
	Excavation	Cu. yd.	16,302	$ 0.30	$ 4,890.60		
	Excavation	Cu. yd.	2,930	.54	1,582.20		
	Excavation	Lin. ft.	23,290	1.00	23,290.00		
	Excavation	Cu. yd.	107,714	.46	49,548.44		
	Excavation	Cu. yd.	1,556	.75	1,167.00		
	Excavation	Cu. yd.	1,771	.825	1,461.08		
	Excavation	Cu. yd.	6,900	.855	5,899.50		
	Excavation	Cu. yd.	13,173	1.02	13,436.46		
	Excavation	Cu. yd.	3,704	1.00	3,704.00		
	Excavation	Cu. yd.	1,377	.90	1,239.30		
3	CLEARING.				105.00		
3	MASONRY RETAINING WALLS.						
	Large Section	Cu. yd.	2,806.4	$ 7.00	$ 19,644.80		
	Small Section	Cu. yd.	170.5	10.00	1,705.00		
	Curve Section	Cu. yd.	1,113.4	10.00	11,134.00		
	Parapet Walls	Lin. ft.	569.5	2.25	1,281.38		
	Hand Railing	Lin. ft.	1,510	....	2,146.90		
	Stone	Cu. yd.	61	10.00	610.00		
	Foundation Excavation	Cu. yd.	1,357	.50	678.50		
	Timber Blk. Hd.	M. B. M.	1	36.00	36.00		
	Grillage	M. B. M.	7	36.00	252.00		
	Rip-Rap, Hand-Laid	Cu. yd.	46	2.50	120.00		
	Total				$143,932.16		

SOLIDIFICATION OF ROADBED.

					APPRECIATION.
Cu. yd.	142,982	$0.03	.....	.....	$4,289.46
Cu. yd.	10,923	0.026	.....	.....	284.00
Cu. yd.	13,173	0.023	.....	.....	302.98
Appreciation			4,876.44	.....	$4,876.44
Present Value			$148,808.60		

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ACCOUNT 6. BRIDGES, TRESTLES AND CULVERTS.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
6	BRIDGES, TRESTLES AND CULVERTS.						
	Concrete, Plain	Cu. yd.	264	$ 7.00	$ 1,848.00	None	.....
	Concrete, Reinforced	Cu. yd.	107	8.50	909.50	None	.....
	Reinforcing Bars	Lbs.	7,000	.025	175.00	None	.....
	Structural Steel	Lbs.	2,000	.04	80.00	50	$ 40.00
	Bridge Timber	M. B. M.	21	45.00	945.00	75	708.75
	Foundation Excavation, Dry	Cu. yd.	30	.50	15.00	None	.....
	Foundation Excavation, Wet	Cu. yd.	140	1.50	210.00	None	.....
	CONCRETE VIADUCT.						
	Concrete, Plain	Cu. yd.	233				
	Concrete, Reinforced	Cu. yd.	2,676				
	Concrete Piles	Lin. ft.	4,492				
	Steel Angles and Rods	Lbs.	127,000				
	Reinforcing Bars	Lbs.	282,000	.....	$ 53,262.25	.....	$ 50.00
	Metal Lath and Plaster	Sq. yd.	2,350				
	Cinder Fill	Cu. yd.	8,700				
	STEEL VIADUCT.						
	Structural Steel, Foundation Bolts and Railing	Lbs.	1,432,000	.....	$ 54,779.54	7	3,834.57
	Total				$112,224.29		$4,633.32
	Depreciation				4,633.32		
	Present Value				$107,590.97		

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ACCOUNT 8. TIES.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
8	TIES.						
	Oak Ties	Each.	45,224	$ 0.61	$ 27,586.64	45	$ 12,413.99
	Treated Ties	Each.	4,868	.81	3,943.08	53	2,089.83
	Switch Ties	M. B. M.	495	24.00	11,880.00	45	5,346.00
	Crossing Ties	M. B. M.	.....	24.00	808.00	45	363.60
	Bridge Ties	M. B. M.	47	45.00	2,115.00	45	951.75
	Steel Ties	Each.	3,452	2.45	8,457.40	9	761.17
	Steel Ties	Each.	753	1.10	828.30	17	140.81
	Steel Sw. Ties	Each.	.....	.....	829.00	9	74.61
	Total				$ 56,447.42		$ 22,141.76
	Depreciation				22,141.76		
	Present Value				$ 34,305.66		

ACCOUNT 9. RAIL.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
9	RAIL.						
	56-lb.	Gr. ton.	116.27	$ 29.65	$ 3,447.41	60	$ 1,231.30
	60-lb.	Gr. ton.	65.32	29.65	1,936.74	60	691.74
	85-lb.	Gr. ton.	2,331.30	29.65	69,123.05	12	4,937.69
	86-lb.	Gr. ton.	14.56	49.90	726.54	50	275.91
	100-lb.	Gr. ton.	33.96	29.65	1,006.91	12	71.93
	141-lb.	Gr. ton.	304.64	49.90	15,201.54	20	2,309.17
	Total				$ 91,442.19		$ 9,517.74
	Depreciation				9,517.74		
	Present Value				$ 81,924.45		

The depreciation percent shown is on the wearing value only. The wearing value of "T" rail is cost new, $29.65, less scrap value of $12.00 per gross ton, $17.65 per gross ton. The wearing value of 141-lb. and 86-lb. girder rail is cost new, $49.90, less scrap value of $12.00 per gross ton, $37.90 per gross ton.

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ACCOUNT 10. OTHER TRACK MATERIAL.

THREE SHEETS—SHEET 1.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
10	OTHER TRACK MATERIAL.						
	Switch Points, 7½-in.	85 lbs.	5	$ 20.50	$ 102.50	15	$ 15.38
	Switch Points, 10-in.	85 lbs.	100	24.10	2,410.00	15	361.50
	Switch Points, 12½-in.	85 lbs.	44	30.50	1,342.00	15	201.30
	Switch Points, 15-in.	85 lbs	39	34.50	1,345.50	15	201.83
	Switch Points, 15-in.	60 lbs.	1	28.00	28.00	35	9.80
	Switch Stands	Pony.	5	17.00	85.00	5	4.25
	Switch Stands.	Gr'd Throw.	124	10.00	1,240.00	5	62.00
	Switch Stands	Lever.	4	6.00	24.00	5	1.20
	Switch Stands.	C'tr Throw.	39	7.75	302.25	5	15.11
	Switch Stands	Elliott.	11	225.00	2,475.00	5	123.75
	Switch Stands	Covers.	17	2.00	34.00	5	1.70
	Switch Stands.	L'g Rods.	6	2.00	12.00	5	.60
	Frogs, 85-lb.	No. 4.	15	22.60	339.00	12	40.68
	Frogs, 85-lb.	No. 4½.	16	23.60	377.60	12	45.31
	Frogs, 85-lb.	No. 5.	63	23.60	1,486.80	12	178.42
	Frogs, 85-lb.	No. 6.	66	25.00	1,650.00	12	198.00
	Frogs, 85-lb.	No. 7.	12	26.00	312.00	12	37.44
	Frogs, 60-lb.	No. 7.	1	20.00	20.00	35	7.00
	Frogs, 85-lb.	No. 8.	8	27.00	216.00	12	25.92
	Frogs, 85-lb.	No. 9.	1	27.00	27.00	12	3.24
	Frogs, 85-lb.	No. 10.	6	28.00	168.00	12	20.16
	Frogs, 85-lb.	Spring.	1	35.00	35.00	12	4.20
	Guard Rail, 85-lb.	Plain.	247	7.00	1,729.00	10	172.90
	Guard Rail, 56-lb.	Plain.	2	6.00	12.00	25	3.00
	Guard Rail, 85-lb.	Clamp.	126	12.00	1,512.00	10	151.20
	Carried Forward				$ 17,284.65		$ 1,885.89

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ACCOUNT 10. OTHER TRACK MATERIAL.

THREE SHEETS—SHEET 2.

NOTE—Wearing value of Joints is 2-3 of cost new. Depreciation percent is of wearing value.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
10	OTHER TRACK MATERIAL—Continued.						
	Brought Forward				$ 17,284.65		$ 1,885.89
	Joints complete for						
	56-lb. Rail	Each.	378	.54	204.12	50	68.04
	60-lb. Rail	Each.	228	.54	123.12	50	41.04
	85-lb. Rail	Each.	6,552	.93	6,093.36	10	393.12
	86-lb. Rail	Each.	34	1.07	36.38	50	12.24
	100-lb. Rail	Each.	65	1.15	74.75	10	5.20
	141-lb. Rail	Each.	445	3.80	1,691.00	10	111.25
	Compromise	Each.	102	3.50	357.00	10	23.46
	Compromise	Each.	32	10.00	320.00	10	21.44
	Spikes	Kegs.	677	3.96	2,680.92	10	268.09
	Tie Plates	Each.	51,271	.14	7,177.94	10	717.79
	Rail Braces	Each.	1,476	.15	221.40	10	22.14
	Derails, Hayes	Each.	16	15.00	240.00	15	36.00
	Derails, Split Pt.	Each.	2	20.00	40.00	15	6.00
	Bumping Posts—						
	Earth	Each.	4	8.00	32.00	None	.....
	Ellis	Each.	16	85.00	1,360.00	33	448.80
	Steel Plate	Each.	54	35.00	1,890.00	20	378.00
	Guard Rail, 70-lb.	Lin. ft.	569	.....	512.10	10	51.21
	Guard Rail, 85-lb.	Lin. ft.	5,584	.....	5,550.71	10	555.07
	Switch Lamps	Each.	15	5.00	75.00	10	7.50
	Tie Rods	Each.	707	.35	247.45	10	24.75
	SPECIAL WORK.						
	High Line	1 Crossing.	.....	.....	809.25	25	202.31
	Dorcas St.	3 Crossing.	.....	.....	1,870.00	40	748.00
	Second St.	1 Crossing.	.....	.....	425.00	10	42.50
	River Yard—Tracks in in Engine House		.....	.....	707.08	None	.....
	Carried Forward				$ 50,023.23		$ 6,069.84

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ACCOUNT 10. OTHER TRACK MATERIAL.
THREE SHEETS—SHEET 3.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
10	OTHER TRACK MATERIAL—Concluded						
	Brought Forward				$ 50,023.23		$ 6,069.84
	SPECIAL WORK.						
	1st St. Yard....3 Crossings.	.....	.....		998.00	15	149.70
	St. L. Ref. Car Co.....	.....	.....		508.50	40	203.40
	9th St. Yard.....	.....	.....		8,324.18	15	1,248.63
	Foot of Dorcas St. Yard...	.....	.....		3,072.00	10	307.20
	Lyon St. Yard.....	.....	.....		995.50	25	248.88
	11th St. Yard.....	.....	.....		4,983.00	15	747.45
	13th St. Yard.....	.....	.....		3,433.00	10	343.30
	2d and Dorcas St. Yard....	.....	.....		937.00	65	609.05
	2d St. Industrial.....	.....	.....		545.00	10	54.50
	Total				$ 73,819.41		$ 9,981.95
	Depreciation				9,981.95		
	Present Value				$ 63,837.46		

ACCOUNT 11. BALLAST.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
11	BALLAST.						
	Concrete	Lin. ft.	18,160	$ 1.40	$ 25,424.00	None	.....
	Stone	Cu. yd.	8,833	.87	7,684.71	None	.....
	Stone, team haul	Cu. yd.	8,146	1.15	9,367.90	None	.....
	Gravel	Cu. yd.	7,558	.66	4,988.28	None	.....
	Cinder	Cu. yd.	24,082	.25	6,020.50	None	.....
	Total				$ 53,485.39		
	Depreciation				.....		
	Present Value				$ 53,485.39		

ACCOUNT 12. TRACK LAYING AND SURFACING.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
12	**TRACK LAYING AND SURFACING.**						
	Rail under 85-lb.						
	In Cinder Ballast	Lin. ft.	6,419	$ .25	$ 1,604.75	None	.....
	85-lb. Rail and over.						
	In Concrete	Lin. ft.	17,100	.40	6,840.00	None	.....
	In Stone and Gravel Ballast	Lin. ft.	53,608	.32	17,154.56	None	.....
	In Cinder Ballast	Lin. ft.	26,514	.27	7,158.78	None	.....
	In Macadam Ball't.	Lin. ft	10,602	.60	6,361.20	None	.....
	On Viaducts	Lin. ft.	2,156	1.00	2,156.00	None	.....
	Turnouts	Each.	149	30.00	4,470.00	None	.....
	SPECIAL WORK.						
	High Line				$ 300.00	None	.....
	Dorcas St. Line				906.00	None	.....
	Second St. Line				150.00	None	.....
	First St. Yard				410.00	None	.....
	St. Louis Ref. Car Co. Tracks				185.00	None	.....
	Ninth St. Yard				1,828.70	None	.....
	Foot of Dorcas St. Tracks				370.00	None	.....
	Lyon St. Yard				385.00	None	.....
	Eleventh St. Yard				500.00	None	.....
	Second and Dorcas Yard				185.00	None	.....
	Rutger St. Yard				40.00	None	.....
	Second St. Industrial Tracks				100.00	None	.....
12	**STORING AND HANDLING TRACK MATERIAL.**						
	Track Material	Gr. ton.	4,093	$ .40	$ 1,637.20	None	.....
	Ties	Each.	58,941	.03	1,768.23	None	.....
	Total				$ 54,510.42		
	Depreciation				.....		
	Present Value				$ 54,510.42		

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ACCOUNT 15. CROSSINGS AND SIGNS.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
15	CROSSINGS AND SIGNS.						
	Crossing Gates, Pneumatic, incl. Tower	Set of 4.	4½	$650.00	$ 2,925.00	25	$ 731.25
	Same, Manual	Set of 4.	1	525.00	525.00	25	131.25
	Road Crossing Signs	Each.	3	6.00	18.00	50	9.00
	Other Signs	Each.	20	2.00	40.00	50	20.00
	Crossing Plank	M. B. M.	81	35.00	2,835.00	50	1,417.50
	Total				$ 6,343.00		$ 2,309.00
	Depreciation				2,309.00		
	Present Value				$ 4,034.00		

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ACCOUNT 16. STATION AND OFFICE BUILDINGS.
TWO SHEETS—SHEET 1.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
16	STATION AND OFFICE BUILDINGS.						
	Yard Office—First St. Yard				$ 1,071.00	12	$ 128.52
	Car Clerk's Office—First St. Yard				790.90	12	94.91
	Freight Sheds—Shipping Yard				20,888.00	18	3,759.84
	Umbrella Shed and Plat.—13th St. Yard				6,144.00	6	368.64
	Platforms—13th St. Yard				1,157.00	6	69.42
	Freight Station—Rutger Yard				685.00	2	13.70
	Umbrella Shed—Rutger Yard				582.00	10	58.20
	DRIVEWAYS.						
	Granite Block, 6-in.	Sq. yd.	3,217	$ 2.50	$ 8,042.50	10	$ 804.25
	Granite Block, 8-in.	Sq. yd.	11,031	2.80	30,886.80	10	3,088.68
	Granite Block, on Sand	Sq. yd.	3,743	1.80	6,737.40	10	673.74
	Brick	Sq. yd.	17,431	1.75	30,504.25	14	4,270.60
	Brick taken up and relaid	Sq. yd.	702	1.25	877.50	14	122.85
	Concrete	Sq. yd.	555	1.50	832.50	6	49.95
	Macadam	Sq. yd.	1,971	.50	985.50	None	.....
	Cinder	Sq. yd.	4,675	.30	1,402.50	None	.....
	Oak Plank	M. B. M.	89	35.00	3,115.00	50	1,557.50
	Curb, Granite	Lin. ft.	2,612	1.00	2,612.00	6	156.72
	Curb, Granitoid	Lin. ft.	747	.80	597.60	6	35.86
	Curb, Special	Lin. ft.	5,960	1.10	6,556.00	6	393.36
	Carried Forward				$124,467.45		$ 15,646.74

ACCOUNT 16. STATION AND OFFICE BUILDINGS. TWO SHEETS—SHEET 2.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
16	STATION AND OFFICE BUILDINGS—Continued.						
	Brought Forward				$124,467.45		$ 15,646.74
	SEWERS.						
	6-in., laid only	Lin. ft.	225	$ 0.20	$ 45.00	None	.....
	8-in., laid only	Lin. ft.	160	.25	40.00	None	.....
	10-in., laid only	Lin. ft.	335	.35	117.25	None	.....
	12-in., laid only	Lin. ft.	150	.40	60.00	None	.....
	6-in., complete	Lin. ft.	3,515	.70	2,460.50	None	.....
	8-in., complete	Lin. ft.	914	.75	685.50	None	.....
	10-in., complete	Lin. ft.	262	.85	222.70	None	.....
	12-in., complete	Lin. ft.	150	1.00	150.00	None	.....
	Manholes	Each.	9	60.00	540.00	9	48.60
	Catch Basins	Each.	29	25.00	725.00	9	65.25
	Inlets	Each.	9	5.00	45.00	9	4.05
	Gratings	Each.	6	3.00	18.00	20	3.60
	MISCELLANEOUS.						
	Office Furniture	.....	.....	$.....	$ 4,416.19	25	$ 1,104.05
	Platform Timber	M. B. M.	32	45.00	1,440.00	50	720.00
	Retaining Wall	Cu. yd.	32	10.00	320.00	None	.....
	Railing	Lin. ft.	63	1.25	78.75	7	5.51
	Total				$135,831.34		$ 17,597.80
	Depreciation				17,597.80		
	Present Value				$118,233.54		

ACCOUNT 17. ROADWAY BUILDINGS.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
17	ROADWAY BUILDINGS.						
	Store Room (old engine house)				$ 5,687.53	20	$ 1,137.51
	Tool House—West End Viaduct				190.00	15	28.50
	Tool House—First St. Yard				300.00	None	.....
	Car Body Cement Store House				50.00	None	.....
	Car Body Tools—River St. Yard				50.00	None	.....
	Total				$ 6,277.53		$ 1,166.01
	Depreciation				1,166.01		
	Present Value				$ 5,111.52		

ACCOUNT 18. WATER STATIONS.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
18	WATER STATIONS.						
	Water Cranes—						
	At Engine House—Installed				$ 410.00	3	$ 12.30
	At Dorcas and 9th Sts.—Installed				410.00	3	12.30
	Total				$ 820.00		$ 24.60
	Depreciation				24.60		
	Present Value				$ 795.40		

ACCOUNT 19. FUEL STATIONS.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
19	FUEL STATIONS.						
	Station near Engine House—						
	Coaling Shed				$ 429.74	2	$ 8.59
	Coal Storage Bin				749.30	8	59.94
	Timber Bulkhead				252.00	8	20.16
	Total				$ 1,431.04		$ 88.69
	Depreciation				88.69		
	Present Value				$ 1,342.35		

ACCOUNT 20. SHOPS AND ENGINE HOUSES.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
20	SHOPS AND ENGINE HOUSES.						
	Engine House and Machine Shop—						
	Building				$ 83,075.47	1	$ 830.75
	Miscellaneous Additions				802.36	None	.....
	Heating Plant				9,926.95	2	198.54
	Lighting, Installation and Wire				7,632.61	2	152.65
	Water Supply				891.32	1	8.91
	Smoke Jacks				1,656.00	2	33.12
	Lockers				160.00	2	3.20
	Switchboard and Lights				716.12	2	14.32
	Transfer Table				5,311.28	2	106.23
	Cinder Pit and Depressed Track				3,212.55	1	32.13
	Store Room and Office Building—						
	Building				9,647.55	1	96.48
	Heating				498.00	2	9.96
	Material Racks				300.00	2	6.00
	Fixtures in Basement				524.80	None	.....
	Sand House—						
	Building				189.10	2	3.78
	Stove and Screen				86.00	3	2.58
	Total				$124,630.09		$ 1,498.65
	Depreciation				1,498.65		
	Present Value				$123,131.44		

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ACCOUNT 30. POWER SUBSTATION BUILDINGS.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
30	POWER SUBSTATION BUILDINGS.						
	Transformer Station Building				$ 1,512.00	1	$ 15.12
	Total				$ 1,512.00		
	Depreciation				15.12		
	Present Value				$ 1,496.88		

ACCOUNT 35. MISCELLANEOUS STRUCTURES.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
35	MISCELLANEOUS STRUCTURES.						
	Track Scale	Each.	1	$2,500.00	$ 2,500.00	15	$ 375.00
	STOCK PENS AT ZEPP STREET.						
	Timber, including Iron	M. B. M.	7	$ 45.00	$ 315.00	15	$ 47.25
	Total				$ 2,815.00		$ 422.25
	Depreciation				422.25		
	Present Value				$ 2,392.75		

ACCOUNT 36. PAVING.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
36	PAVING.						
	Granite Block on Concrete	Sq. yd.	7,064	$ 2.50	$ 17,660.00	10	$ 1,766.00
	Brick	Sq. yd.	2,528	1.75	4,424.00	14	619.36
	Macadam	Sq. yd.	503	.50	251.50	None	.....
	Creosoted Block	Sq. yd.	292	3.40	992.80	16	158.85
	Concrete	Sq. yd.	204	1.50	306.00	6	18.36
	Planking	M. B. M.	51	35.00	1,785.00	50	892.50
	Catch Basin	Each.	1	25.00	25.00	9	2.25
	Total				$ 25,444.30		$ 3,457.32
	Depreciation				3,457.32		
	Present Value				$ 21,986.98		

ACCOUNT 37. ROADWAY MACHINES.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
37	ROADWAY MACHINES.						
	Push Cars	Each.	2	$ 22.50	$ 45.00	None	.....
	Push Cars	Each.	1	22.50	22.50		$ 7.50
	Total				$ 67.50		$ 7.50
	Depreciation				7.50		
	Present Value				$ 60.00		

ACCOUNT 38. ROADWAY SMALL TOOLS.

I. C. C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
38	ROADWAY SMALL TOOLS.						
	Shovels, picks, bars, rail tongs, jacks, drills, and miscellaneous track tools				$ 805.29	25	$ 201.32
	Total				$ 805.29		$ 201.32
	Depreciation				201.32		
	Present Value				$ 603.97		

ACCOUNT 44. SHOP MACHINERY.

PATTERN SHOP.

Item	Maker	Age (Years)	Cost	Depreciation Percent	Depreciation Amount	Present Value
1 No. 1 "Variety" Saw Bench, with boring attachment, individual drive. Equipped with one saw and one No. 3 "Jones" saw guard; no countershaft. Operated by one Wagner 5-h. p. 220-volt, 3-phase A. C. motor, 1,440 R. P. M., equipped with fuse terminals, switch and pulleys.	Amer. Woodworking Machinery Company.	1	$ 247.51	2	$ 4.95	$ 242.56
1 No. 802 Planer and Jointer; No. 1 16-inch, with safety cylinder, one pair knives and bevel gauge. Without countershaft. Operated by one Wagner 5-h. p. 220-440-volt, 25-cycle, 3-phase A. C. motor, with rails, one PST switch and fuse terminals.	Amer. Woodworking Machinery Company.	1	257.84	2	5.15	252.69
1 No. 6-F "Fox" Hand Trimmer, No. 17925.....	Amer. Woodworking Machinery Company.	1	130.00	2	2.60	127.40
1 Fig. 514 No. 10 Band Saw; 36-inch, with iron tilting table, "Mohawk" guide, one hand rip gauge, ½-inch blade, set of brazing tools and wrenches; equipped with ball bearings, iron guard doors for lower wheels and wire guard for top wheel. Operated by one Roth 3-H. P. 220-440-volt 25-cycle, 3-phase, 600 R. P. M. motor, attached to and made part of machine.	Amer. Woodworking Machinery Company.	1	374.00	2	7.45	366.52
1 Pattern Maker's Lathe; 20-inch, 12-foot bed, hand feeding carriage set over tail block, with 2-h. p., 220-440-volt "Richmond" motor on saddle underneath head block.	Amer. Woodworking Machinery Company.	1	350.36	..	....	350.36
		Total, Pattern Shop..	$ 1,389.71		$ 20.18	$ 1,369.53

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ACCOUNT 44. SHOP MACHINERY.

MACHINE SHOP.

	Item	Maker	Age (Years)	Cost	Depreciation Percent	Depreciation Amount	Present Value
1	Air Compressor, Type 3VS, 23-inch, 300 cu. ft., 90-pound, "3PH," 25-cycle, 230-volt, A. C., General Electric motor-driven; machine No. 275; motor No. 1,165,-008, with one suction strainer for taking air from outside of building; one type "RNN" controller, complete with "UD" 3-governor No. 102; 90-100-pound VS strainer and 7x14-inch reservoir; one 42½x96-inch reservoir; one ½-inch drain cock; one 110-pound safety valve; one 1½-inch mica insulator and one 1½-inch stop cock.	Nat'l Brake & Electric Co.	1	$ 2,371.39	..	$.....	$ 2,371.39
1	Combination Punch and Shear, hand operated, including bed.	Niagara M. & T. Works.	1	34.00	5	1.70	32.30
1	"Yankee" Cutter-Reamer Drill Grinder, Style BX; 20-inch reamers, 16-inch flutes, including one 2-h. p. 220-volt, 3-phase, 25-cycle General Electric motor.	J. T. Ryarson & Son.	1	200.00	2	4.00	196.00
1	Traveling Crane, 10-ton, 3-motor electric, 59-ft. span center to center of carrying wheels, platform full length of bridge on one side; wiring in accordance with Underwriters' rules; complete with General Electric motors; hoist 15; bridge 7½; trolley 3-h. p., and controllers.	Powling & Harnishfeger Co.	1	3,915.00	..	....	3,915.00
1	Set (4) Locomotive Hoisting Jacks, 150-ton, with 27-h. p., 230-volt, 3-phase A. C. General Electric motors.	Whiting Fdry. Equipt. Co.	1	4,130.00	..	....	4,130.00
		Carried Forward....		$10,650.39		$ 5.70	$10,644.69

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ACCOUNT 44. SHOP MACHINERY.

MACHINE SHOP.

Item	Maker	Age (Years)	Cost	Depreciation Percent	Depreciation Amount	Present Value
Brought Forward....			$10,650.39		$ 5.70	$10,644.69
1 50-ton locomotive Forging Press complete, with 3-h. p., 220-volt, 3-phase A. C. General Electric motor and crane.	Watson-Stillman Company.	1	$ 913.75	..	....	$ 913.75
1 2-inch double-head Bolt Cutter, with full set of right-hand dies for each head for cutting bolts ⅜ in. to 2 in., and right-hand dies for each head for cutting 12-thread stay-bolts on 1 1-16, 1⅛, 1 3-16, 1¼, 1 5-16, 1⅜ and 1½. Chasers, piping and pump included. Operated by one 5-h. p. Wagner 220-440-volt, 25-cycle, 3-phase, 720 R. P. M. motor, A. C., with pulley and rails, switch and fuse terminals.	Landis Machine Company.	1	1,009.62	2	20.19	989.43
1 Crank Shaper, 24-inch, double triple quick-stroke back geared, with vise table support, automatic trip feed, and all regular features. Operated by one Wagner 5-h. p. 220-440-volt, 25-cycle, 3-phase, 1,410 R. P. M. A. C. motor, with pulleys and rails, switch and fuse terminals.	Gould & Eberhardt.	1	927.87	..	....	927.87
1 Radial Drill; 5-foot arm, full universal, with plain table, positive back gears, depth gauge, eight changes of speed, from .007 to .064 per revolution; through feed box having steel gears, gear guards, reversible clutch for tapping, with 24 changes of speed, fitted with speed box; all bearings bronze bushed. All gears 5 percent nickel steel. Full set of wrenches. Operated by one Wagner 5-h. p. 220-440-volt, 25-cycle, 3-phase, 710 R. P. M., A. C. motor, with pulley and rail, switch, and fuse terminal.	Cincinnati-Bickford.	1	1,834.44	..	....	1,834.44
1 Drill Press; 21-inch, heavy pattern, sliding head, with wheel lever, power feed, back gears, automatic stop and quick return, geared tapping attachment, positive geared feed box giving four speeds, .005, .008, .012, .017 per revolution, equipped with Morse No. 3 taper square base, swinging round table. Operated by one Wagner 1-h. p. 220-440-volt, 25-cycle, 3-phase, A. C. motor, 710 R. P. M., with pulley, without rail; one 30-ampere switch and fuse terminal.	Cincinnati-Bickford.	1	334.99	..	....	334.99
Carried Forward			$15,671.06		$ 25.89	$15,645.17

ACCOUNT 44. SHOP MACHINERY.

MACHINE SHOP.

Item	Maker	Age (Years)	Cost	Depreciation Percent	Depreciation Amount	Present Value
	Brought Forward....		$15,671.06		$ 25.89	$15,645.17
1 Driving Wheel Lathe; 79-in., with quartering attachment, but not with journal bearing attachment. Operated with three Wagner motors, two 3-h. p. 220-440-volt, 25-cycle, 3-phase, 750 R. P. M. A. C. motors, without pulley or rails, with 300-ampere fuse terminals; and one 25-h. p. 220-440-volt, 25-cycle, 3-phase 750 R. P. M. A. C. motor, no pulley or rails, with compensator with no voltage release.	Niles-Bement-Pond Company.	1	$ 6,384.02	..	....	$ 6,384.02
1 Dry Grinder; 14x2 in., with General Electric A. C. 220-440-volt, 25-cycle, 3-phase motor.	Ransom Mfg. Company.	1	170.00	2	3.40	166.60
1 Engine Lathe; 24-in., actual swing 26½ in., high duty, with sight-speed geared head for motor drive, 9 speed double back-geared head, equipped with European tool block, 2D "Skinner" heavy independent chuck, 15 in., and "Skinner" four-jaw universal chuck. Operated by one Wagner 10-h. p. 220-440-volt, 25-cycle, 3-phase, 750 R. P. M. A. C. motor, without pulley or rails, with C. and H. reversible drum type controller.	Amer. Machine Tool Company.	1	1,858.11	..	....	1,858.11
1 Vertical Boring and Turning Mill; 42-in. (swings 44 in.), heavy duty, with one swivel head and one turret head, back gear lever, direct drive; also one set of four model 88, 10-in. steel body jaws. Operated by one Wagner 10-h. p., 220-440-volt, 25-cycle, 3-phase, 710 R. P. M. A. C. motor, without pulley or rails, with General Electric compensator with no voltage release.	King Machine Tool Company.	1	2,553.09	..	....	2,553.09
1 Engine Lathe; 14-in., high duty, 12x10-in. chucks, controller on apron of lathe. Geared head. Operated by one Wagner 3-h. p. 220-volt, 25-cycle, 3-phase A. C. motor, 710 R. P. M., without pulley and rails. C. and H. reversible drum type controller.	Amer. Machine Tool Company.	1	878.31	..	....	878.31
	Carried Forward		$27,514.59		$ 29.29	$27,485.30

ACCOUNT 44. SHOP MACHINERY.
MACHINE SHOP.

Item	Maker	Age (Years)	Cost	Depreciation Percent	Depreciation Amount	Present Value
	Brought Forward....		$27,514.59		$ 29.29	$27.485.30
1 Planer; 36x36 in. x 14 ft., heavy pattern, with four-step cone speed variator, two heads on rail, two side heads, rail heads with power feed in all directions, side heads with vertical feed only; gearing attachments; direct drive. Operated by one Wagner 15-h. p., 220-440-volt, 25-cycle, 3-phase, 500 R. P. M., A. C. motor, without pulley and rail; with General Electric compensator with no voltage release.	Amer. Machine Tool Company.	1	$ 3,393.87	..	....	$ 3,393.87
1 Boring Bar; portable, 4 in. diameter, 6 ft. long.	H. B. Underwood.	1	330.00	..	....	330.00
1 Drill Grinder; "Yankee," Style BX, cutter reamer grinder, 20-in. reamers, 16-in. flutes, including one 2-h. p., 220-volt, 3-phase, 25-cycle General Electric motor.	J. T. Ryerson & Son.	1	200.00	2	4.00	196.00
1 Metal Saw; "Q. and C," No. 2-B, with circular base on turntable, one automatic saw grinder and lateral adjustment. Operated by one Wagner 5-h. p., 220-440-volt, 25-cycle, 3-phase, 710 R. P. M. A. C. motor, without pulley or base rails; with 30-ampere switch, and 15-ampere fuse terminals; and one General Electric ½-h. p., 220-volt, 25-cycle, 3-phase motor for operating saw sharpener, equipped with sole plates.	J. T. Ryerson & Son.	1	1,307.82	..	....	1,307.82
1 Set light sheet iron Bending Rolls; quick-acting type, 6½ in. diameter upper roll; 5 in. diameter lower roll. Hand tool.	J. T. Ryerson & Son.	1	450.00	..	....	450.00
1 8-foot Flanging Clamp; hand operated.	J. T. Ryerson & Son.	1	223.00	..	....	223.00
1 Flue Cutting Apparatus.	Fuessler.	1	173.04	..	....	173.04
	Carried Forward		$33,592.32		$ 33.29	$33,559.03

ACCOUNT 44. SHOP MACHINERY.

MACHINE SHOP.

Item	Maker	Cost	Depreciation Percent	Depreciation Amount	Present Value
	Brought Forward....	$33,592.32		$ 33.29	$33,559.03
13 Vises		160.00	5	8.00	152.00
2 Anvils		29.25	5	1.46	27.79
1 Portable Crane	Canton Fdy. & Mch. Co.	75.31	5	3.77	71.54
6 Steel Tool Cabinets	Railway Company.	100.00	10	10.00	90.00
4 Jib Cranes with Trolley	Railway Company.	180.00	10	18.00	162.00
2 5-in. Air Hoists	Railway Company.	50.00	10	5.00	45.00
5 Surface Plates	Railway Company.	305.00	10	30.50	274.50
1 Bulldozer	Railway Company.	100.00	10	10.00	90.00
1 1-ton Differential Chain Hoist		4.80	10	.48	4.32
1 Flue Swedge	Railway Company.	50.00	20	10.00	40.00
1 Flue Cutter	Railway Company.	50.00	20	10.00	40.00
1 Centering Machine	Railway Company.	50.00	20	10.00	40.00
1 Air Motor	Independent Pneumatic Tool Company.	80.00	10	8.00	72.00
1 Air Motor	Ingersoll-Rand.	76.50	10	7.65	68.85
1 Corner Drill	Chicago Pneumatic Tool Company.	90.00	10	9.00	81.00
	Carried Forward	$34,993.18		$175.15	$34,818.03

ACCOUNT 44. SHOP MACHINERY.

MACHINE SHOP.

Item	Maker	Cost	Depreciation Percent	Depreciation Amount	Present Value
	Brought Forward.....	$34,993.18		$175.15	$34,818.03
1 Breast Drill	Chicago Pneumatic Tool Company.	52.00	10	5.20	46.80
2 Calking Hammers	Railway Company.	30.00	10	3.00	27.00
1 Riveting Hammer	Railway Company.	45.00	10	4.50	40.50
1 Chipping Hammer	Canton.	25.00	10	2.50	22.50
1 Gauge Tester	Crosby.	58.50	..	....	58.50
2 Hydraulic Jacks	Dudgeon.	260.00	10	26.00	234.00
Miscellaneous Small Tools.....		3,606.14	10	360.61	3,245.53
Labor Unloading and Placing Machines.....		1,800.00	..	....	1,800.00
Foundations for Machines.....		1,151.00	..	....	1,151.00
Total, Machine Shop.....		$42,020.82		$576.96	$41,443.86
Grand Total, Shop Machinery.....		43,410.53		597.14	42,813.39

ACCOUNT 46. POWER SUBSTATION APPARATUS.

Item	Maker	Age (Years)	Cost	Depreciation Percent	Depreciation Amount	Present Value
2 Transformers; double ratio, 5-ampere, secondary current, insulated for 13,200 volts primary voltage.	Wagner.	1	$ 54.00	5	$ 2.70	$ 51.30
1 Transformer; 20 KW, 13,200-6,600-115-230-volt, 25-cycle, single phase, equipped for inside installation, with hangers and oil.	Wagner.	1	297.00	5	14.85	282.15
6 Switches; Type "L," Form C-6, General Electric Catalog No. 76433, single pole, single throw, disconnecting, with safety catches, operating hook and handle.	General Electric Company.	1	90.00	..	....	90.00
1 Voltmeter; General Electric Catalog No. 51020, 25-cycle, A. C. horizontal edgewise, calibrated for 13,200-6,600-volt primary current, with one 8-point potential receptacle, and one 4-point plug and plug holder.	General Electric Company.	1	37.00	..	....	37.00
1 Switch; General Electric Catalog No. 125,453, 300-ampere, 15,000-volt, triple pole, single throw, Type "F," Form K-12, oil, hand operated, remote control.	General Electric Company.	1	130.00	..	....	130.00
2 Type I, Form D-4, combined expulsion fuse holder and disconnecting switches and fuses, with insulation.	General Electric Company.	1	118.00	..	....	118.00
3 Transformers; 50 KVA, 13,200-6,600-230-115-volt, 25-cycle, single phase, Type 11-ROB, Nos. 61,910-911-912, with oil.	Wagner.	1	1,263.00	5	63.15	1,199.85
1 General Electric Lightning Arrester; Catalog No. 79,586, A. C., equipped with charging resistances, pipe supports and copper tubing for making connection to horn gaps. Primary voltage 13,200-6,600, 25-cycle, 3-phase.	General Electric Company.	1	310.00	..	....	310.00
3 Choke Coils; No. 78806, mounted on steel bases.	General Electric Company.	1	63.00	..	....	63.00
Total, Power Plant Machinery.....			$ 2,362.00		$ 80.70	$ 2,281.30

ACCOUNT 47. UNAPPLIED CONSTRUCTION MATERIALS AND SUPPLIES.

I.C.C. Item	Subject	Unit	Quantity	Unit Price	Cost of Reproduction New	Depreciation Per Cent	Depreciation Amount
47	UNAPPLIED CONSTRUCTION MATERIALS AND SUPPLIES.						
	10-ft. Switch Points	Pair.	3	$ 24.10	$ 72.30	None	.....
	No. 5 Frogs, 85-lb.	Each.	6	23.60	141.60	None	.....
	Special Switches	Each.	3	220.00	660.00	None	.....
	Switch Ties	M. B. M.	23	24.00	552.00	None	.....
	Bridge Timber	M. B. M.	13	30.00	390.00	None	.....
	Granite Blocks	M.	50,000	24.00	1,200.00	None	.....
	Total				$ 3,015.90		
	Depreciation				.....		
	Present Value				$. 3,015.90		

ACCOUNT 51 STEAM LOCOMOTIVES.

Class	Locomotive Number	Builder	Date Built	Weight on Drivers	Diameter Drivers	Number Drivers	Size of Cylinders	Steam Pressure	Cost	Depreciation Percent	Depreciation Amount	Present Value
Switch	1	Amer. Loco. Co	1907	143,000	50 in.	6	20x26 in.	180 lbs.	$13,500	25	$ 3,375	$10,125
Switch	2	Amer. Loco. Co.	1907	143,000	50 in.	6	20x26 in.	180 lbs.	13,500	25	3,375	10,125
Switch	3	Lima Loco. Co.	1911	145,000	50 in.	6	20x26 in.	190 lbs.	11,125	15	1,669	9,456
Switch	4	Amer. Loco. Co.	1909	143,000	50 in.	6	20x26 in.	180 lbs.	12,381	20	2,476	9,905
Switch	5	Baldwin Loco. Co.	*1892	104,000	50 in.	6	18x26 in.	150 lbs.	4,500	..	.....	4,500
Switch	6	Baldwin Loco. Co.	1912	146,000	50 in.	6	20x26 in.	190 lbs.	12,335	5	616	11,719
Switch	7	Baldwin Loco. Co.	1913	146,000	50 in.	6	20x26 in.	190 lbs.	12,375	5	619	11,756
Total..	7								$79,716		$12,130	$67,586

*Rebuilt 1911.

ACCOUNT 53. FREIGHT TRAIN CARS.

Class	No. Cars	Car Numbers	Capacity	Sills	Draft Gear	Date Built	Cost, Each	Total Cost	Depreciation Percent	Depreciation Amount	Present Value
Box	2	3000–3010	60,000	Steel Channels.	Cardwell Friction.	1913	$917.00	$ 1,834.00	5	$ 91.70	$ 1,742.30
Box	1	3020	60,000	Wood.	Spring.	1913	683.00	683.00	5	34.15	648.85
Gondola	3	6075–76–77	60,000	Wood.	Spring.	1914	538.00	1,614.00	..	.....	1,614.00
Bottom Dump	25	8050 to 8074	80,000	Wood.	Spring.	1914	745.00	18,625.00	5	931.25	17,693.75
Bottom Dump	50	9500 to 9549	100,000	Steel.	Cardwell Friction.	1914	980.00	49,000.00	..	.....	49,000.00
Total	81							$71,756.00		$1,057.10	$70,698.90

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ACCOUNT 57. WORK EQUIPMENT.

Class	Cars	Numbers	Capacity	Sills	Gear	Built	Each	Cost	Percent	Amount	Value
Gondola Side Dump	2	2000–2001	60,000	Wood.	Spring.	Unknown.	$785.00	$1,570.00	60	$ 942.00	$ 628.00
Cinder Box, Tool	1	No Number	50,000	Wood.	Spring.	Unknown.	480.00	480.00	60	288.00	192.00
Tool Car Supplies								1,106.54	25	276.63	829.91
Total								$3,156.54		$1,506.63	$1,649.91

The Witness (proceeding): Exhibit No. 2 consists in general of totals of accounts, by numbers, according to the classification of the Valuation Division of the Interstate Commerce Commission for all property owned or operated by the Manufacturers' Railway Company.

Account No. 2 gives the details of land acquired and used for transportation purposes; that is, deeded land; the location of same, and the aggregate estimated value of $557,349.50. This sheet bears a statement which has already been made in regard to the character of the title and the condition of the title through the Arsenal Yard, in this account as the last item.

ge 43 The next sheet is a continuation of the detail of Account No. 2; so is the third sheet.

Account No. 3 relates to the grading, and purports to show the quantities of excavation, to which various prices have been applied, as shown on this statement, for the purpose of determining the cost of such grading. It also shows the cubic contents of various masonry retaining walls and the prices that have been applied to these quantities for the purpose of determining their valuation. Also an item for solidification of roadbed, being the yardage or amounts, to which various appreciation or solidification values have been assigned, for the purpose of determining the total appreciation due to solidification with respect to this undertaking, that is, the construction of the Manufacturers' Railway.

ge 44 "**Mr. Esterline:** I want to object to the note at the foot of the first page, stating that 'the easement from the United States for the use of this property is now in the name of the Anheuser-Busch Brewing Association'—and now the objectionable part—'although the property was paid for by the Manufacturers' Railway,' as a mere statement,

and not the best evidence of the transaction. Also the remainder of the note concerning the bill in preparation for the purpose of transferring the easement title by congressional enactment to the Manufacturers' Railway, and that the proposed transfer has the approval of the War Department. I object to that as not the best evidence.

Mr. Esterline: Q. May I ask if this proposed transfer, and the proposed approval of the War Department has been accepted in your estimate as a fact already accomplished? A. To the extent that $32,000 has been allowed in the estimate for the value of that strip of right-of-way through the Arsenal grounds, yes, sir. That did enter into my estimate as having been done.

Page 45 **Mr. Esterline:** Mr. Andrews, I suppose it is understood that we are not waiving our rights to object by keeping quiet and letting the witness go on in his own way; although we have a general objection to all this, it might be overruled, and we want to preserve our right to any specific objections on specific matters; and we want it to be understood that by our keeping quiet now and allowing the witness to go on, we are not waiving anything here as to the evidence or any part of it.

Mr. Andrews: Very well."

Page 46 **The Witness** (Proceeding—Direct Examination): Turning to Account No. 2 about the Arsenal Yard, I have opposite that item a cost of reproduction new, $32,000. That represents the present market value of the right-of-way in those yards.

Account No. 6 entitled "Bridges, Trestles and Culverts," shows the quantities and unit prices attached to those quantities, that would be required for the concrete, the structural steel bridge timber, foundation, excavation, etc., for the construction and erection of the bridges and trestles as they existed on the Manu-

facturers' Railway as of January 1, 1915. Also the
Page 47 prices that attached to the construction of the concrete viaduct which formed a part of the Manufacturers' Railway on that date, and of the steel viaduct as of the same date.

I find the total present value of bridges, trestles and culverts to be $112,224.29; but have an item of depreciation there which represents that deterioration in the facility or property in excess of that which has been restored or made good as a result of ordinary maintenance methods.

Account No. 8 purports to show the value of miscellaneous material, oak ties, treated ties, bridge ties, steel ties, and switch ties entering into the construction and forming a part of the Manufacturers' Railway, as of January 1, 1915.

Account No. 9 relates to rails. It shows the weight, the gross tons of rails of each weight, and the value that attaches to the same, that enter into the construc-
Page 48 tion or reproduction of the Manufacturers' Railway as of January 1, 1915; the total cost of all rails; the depreciation and the present value; and the depreciation is shown by the foot note to be stated in percentages on the basis of the wearing value only.

The wearing value is stated to be the cost, new, $29.65, less scrap value of $12.00 per ton, or $17.65. The wearing value of 141-pound and 84-pound girder rail is—cost new $49.90, less scrap value of $12.00 per gross ton, or $37.90 per gross ton.

Account No. 10 consists of three sheets and purports to show the cost of other miscellaneous track material, crossings, frogs, switches, stands, etc.

Account No. 11 purports to show the classification of ballast; the lineal feet or cubic yards of the same;

the price that is attached thereto for the purpose of obtaining the cost of reproduction, and the total cost as of January 1, 1915.

Account No. 12 purports to show the cost of track laying and surfacing of the track of the Manufacturers' Railway Company, stated in lineal feet, and in connection therewith the price per lineal foot for the various classes of work, both as to 85-pound rail and for "special work," meaning work of laying tracks such as have been described, to consist of heavy girder or special rails in streets and at special crossings, etc., in connection with such tracks.

Page 49 The item, "Storing and Handling Track Material," means the cost estimated upon a basis of prices that obtain in practice, of storing track material in connection with the prosecution of the work. The letters "G. T." in that exhibit opposite the words "Track Material," mean the amount of gross tons that are handled.

My account numbers skip from 12 to 15; the prescribed classification accounts include a great many items which do not enter into the construction of the Manufacturers' Railway. For instance, No. 13 is the "Right-of-way Fences"; there are no fences. No. 14, "Snow and Sand Fences, and Snow—," I omit those items which are not represented by this construction.

Account No. 15, "Crossings and Signs," gives the number of crossing signs and other signs, and the measurement of crossing planks as the same exist in the road as constructed, as of the date of the valuation.

Page 50 The letters "M. B. M." opposite the words "Crossing plank" on that page mean "1,000 feet board measure."

Account No. 16 treats of station and office buildings, and consists of two sheets. It gives the location and cost of the various office and station buildings. It also

comprises driveways, which are shown with respect to the character of the pavement, and the unit price that was attached to the same for the purpose of this valuation. Under the heading of "Driveways" the letters "S. Y." opposite my first item, "Granite Blocks," means square yards. The account also includes sewers, the size of each kind, the lineal feet, and the prices that are attached thereto for the purpose of the valuation. I put sewers in because they had to be constructed by the Company in order to conform to the requirements of the city. I don't know whether they are kept in order by the company or by the City; I presume by the City, which reserves the right generally to take
Page 51 up the pavement for that purpose. The streets have to be paved in order to conform to the requirements of the City, as it is customary to build sewers before the streets are paved. The Manufacturers' Railway did build these sewers, according to its records.

Under the head of "Miscellaneous" is included the value of office furniture, platform timber, and some small items of retaining walls in connection with the office building and railing.

Account No. 17 relates to "Roadway Buildings." It comprises various buildings that are used for the purposes of the Company, and gives the location and value of the same.

Account No. 18 covers "Water Stations." It states the location, and cost—or value—of certain water cranes.

Account No. 19 gives the cost of "Fuel Stations" near the engine house.

Account No. 20 gives the cost of the component parts of the engine house, engine shop, and the appurtenant buildings and facilities; also the storeroom and office

building in connection with this shop, and of the sand house.

Account No. 30 gives the cost of the power sub-station buildings known as the transformer station buildings.

Page 52 Account No. 35 gives the cost under the title "Miscellaneous Structures" of track scales, and of the stock pens at Zepp Street.

Account No. 36, "Paving," gives the quantities in square yards, and the unit prices attached to the same, for the purpose of making the estimate of the cost of reproduction.

Account No. 37, "Roadway Machines," gives the number and cost of the push cars owned by the Manufacturers' Railway Company.

Account No. 38 gives the value of roadway small tools owned by the Manufacturers' Railway Company.

Account No. 44, "Shop Machinery," gives the value of the machinery in the pattern shop and the machine shop of the Manufacturers' Railway Company.

Account No. 46 gives the value of the power sub-station apparatus.

Account No. 47 purports to show the value of unapplied construction materials and supplies. That is, materials and supplies that are held in store for future construction purposes.

Account No. 51 is in regard to the locomotives owned by the Company, the date built, the cost, depreciation, and present value.

Account No. 53 purports to give similar information in regard to the freight cars.

Account No. 57 is information of the same character in regard to work equipment.

Page 53 I made an inventory of all material and stores, which showed materials and supplies for use in connection with the maintenance of the property, to the amount of $33,617.55; and, as previously stated, it showed the additional item of $3,015.90 for the unapplied construction material. I have not included the maintenance supplies in my valuation, but have included the amount of $3,015.90 for unapplied construction material.

I have prepared summaries of the valuation made by me of the property of the Manufacturers' Railway, and I file them as Exhibit No. 3.

(The summaries last referred to were marked Exhibit No. 3.)

SUMMARY A.

ENTIRE PROPERTY OPERATED BY MANUFACTURERS' RAILWAY COMPANY

(Includes all colored tracks shown on the Map).

I. C. C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
I	ROAD.			
1	Engineering	$ 93,621.06	None	$ 93,621.06
2	Land for Transportation Purposes	2,313,012.00	None	2,313,012.00
3	Grading	143,932.16	Appreciation $ 4,876.44	148,808.60
6	Bridges, Trestles and Culverts	112,224.29	Depreciation 4,633.32	107,590.97
8	Ties	56,447.42	22,141.76	34,305.66
9	Rails	91,442.19	9,517.74	81,924.45
10	Other Track Material	73,819.41	9,981.95	63,837.46
11	Ballast	53,485.39	None	53,485.39
12	Track Laying and Surfacing	54,510.42	None	54,510.42
15	Crossings and Signs	6,343.00	2,309.00	4,034.00
16	Station and Office Buildings	135,831.34	17,597.80	118,233.54
17	Roadway Buildings	6,277.53	1,166.01	5,111.52
18	Water Stations	820.00	24.60	795.40
19	Fuel Stations	1,431.04	88.69	1,342.35
20	Shops and Engine Houses	124,630.09	1,498.65	123,131.44
30	Power Substation Buildings	1,512.00	15.12	1,496.88
35	Miscellaneous Structures	2,815.00	422.25	2,392.75
36	Paving	25,444.30	3,457.32	21,986.98
37	Roadway Machines	67.50	7.50	60.00
38	Roadway Small Tools	805.29	201.32	603.97
44	Shop Machinery	43,410.53	597.14	42,813.39
46	Power Substation Apparatus	2,362.00	80.70	2,281.30
47	Unapplied Construction Material	3,015.90	None	3,015.90
			$73,740.87	
			App. 4,876.44	
	Total Road	$3,347,259.86	$68,864.43	$3,278,395.43
II	EQUIPMENT.			
51	Steam Locomotives	$ 79,716.00	$12,130.00	$ 67,586.00
53	Freight-train Cars	71,756.00	1,057.10	70,698.90
57	Work Equipment	3,156.54	1,506.63	1,649.91
	Total Equipment	$ 154,628.54	$14,693.73	$ 139,934.81
III	GENERAL EXPENDITURES.			
	Interest on Items 1 to 47, both inclusive, at 3¾%	$ 125,522.25		$ 125,522.25
	Grand Total	$3,627,410.65	$83,558.16	$3,543,852.49

SUMMARY B.

YARDS AND TRACKS OWNED BY ANHEUSER-BUSCH BREWING ASSOCIATION.

(Tracks colored Red on the Map.)

I. C. C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
I	ROAD.			
1	Engineering	$ 24,479.98	None	$ 24,479.98
2	Land for Transportation Purposes	565,544.00	None	565,544.00
			Appreciation	
3	Grading	77,094.01	$ 3,404.55	80,498.56
			Depreciation	
8	Ties	8,626.78	3,882.05	4,744.73
9	Rail	13,818.14	1,381.81	12,436.33
10	Other Track Material	20,773.80	3,116.07	17,657.73
11	Ballast	16,900.64	None	16,900.64
12	Track Laying	9,876.17	None	9,876.17
16	Station and Office Buildings	96,067.90	12,008.37	84,058.63
36	Paving	1,643.25	230.05	1,413.20
	Total Road	$ 834,823.77	$20,618.35	$ 817,609.97
			App. 3,404.55	
			$17,213.80	
III	GENERAL EXPENDITURES.			
	Interest during construction, at 3¾%	$ 31,305.89	.....	$ 31,305.89
	Grand Total	$ 866,129.66	$17,213.80	$ 848,915.86

NOTE—See Exhibit M for detail.

SUMMARY B-1.

VALUE OF TRACKS AND APPURTENANT RIGHT-OF-WAY USED EXCLUSIVELY BY ANHEUSER-BUSCH BREWING ASSOCIATION.

I. C. C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
I	ROAD.			
1	Engineering	$ 4,769.37	None	$ 4,769.37
2	Land for Transportation Purposes	112,452.00	None	112,452.00
			Appreciation	
3	Grading	1,461.08	$ 53.31	1,514.39
			Depreciation	
8	Ties	3,315.74	1,492.08	1,823.66
9	Rail	5,027.81	198.09	4,829.72
10	Other Track Material	12,274.11	1,968.61	10,305.50
11	Ballast	9,463.56	None	9,463.56
12	Track Laying	4,399.43	None	4,399.43
16	Station and Office Buildings	10,196.25	1,706.24	8,490.01
36	Paving	1,555.75	221.30	1,334.45
	Total Road	$ 164,915.10	$ 5,586.32	$ 159,382.09
			53.31	
			$ 5,533.01	
III	GENERAL EXPENDITURES.			
76	Interest during Construction at 3¾%	$ 6,184.32		$ 6,184.32
	Grand Total	$ 171,099.42	$ 5,533.01	$ 165,566.41

(Consisting of the Ninth Street Yard and 12 tracks in First, Eleventh and Foot of Dorcas Street Yards, colored red on map.)

SUMMARY C.

SUMMARY A MINUS SUMMARY B.

I. C. C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
	ROAD.			
I				
1	Engineering	$ 69,141.08	None	$ 69,141.08
2	Land for Transportation Purposes	1,747,468.00	None	1,747,468.00
			Appreciation	
3	Grading	66,838.15	$ 1,471.89	68,310.04
			Depreciation	
6	Bridges, Trestles and Culverts	112,224.29	4,633.32	107,590.97
8	Ties	47,820.64	18,259.71	29,560.93
9	Rails	77,624.05	8,135.93	69,488.12
10	Other Track Material	53,045.61	6,865.88	46,179.73
11	Ballast	36,584.75	None	36,584.75
12	Track Laying	44,634.25	None	44,634.25
15	Crossings and Signs	6,343.00	2,309.00	4,034.00
16	Station and Office Buildings	39,764.34	5,589.43	34,174.91
17	Roadway Buildings	6,277.53	1,166.01	5,111.52
18	Water Stations	820.00	24.60	795.40
19	Fuel Stations	1,431.04	88.69	1,342.35
20	Shops	124,630.09	1,498.65	123,131.44
30	Power Substation Buildings	1,512.00	15.12	1,496.88
35	Miscellaneous Structures	2,815.00	422.25	2,392.75
36	Paving	23,801.05	3,227.27	20,573.78
37	Roadway Machines	67.50	7.50	60.00
38	Roadway Tools	805.29	201.32	603.97
44	Shop Machinery	43,410.53	597.14	42,813.39
46	Power Substation Apparatus	2,362.00	80.70	2,281.30
47	Unapplied Construction Material	3,015.90	None	3,015.90
			$53,122.52	
			App. 1,471.89	
	Total Road	$2,512,436.09	$51,650.63	$2,460,785.46
	EQUIPMENT.			
II				
51	Steam Locomotives	$ 79,716.00	$12,130.00	$ 67,586.00
53	Freight-train Cars	71,756.00	1,057.10	70,698.90
57	Work Equipment	3,156.54	1,506.63	1,649.91
	Total Equipment	$ 154,628.54	$14,693.73	$ 139,934.81
	GENERAL EXPENDITURES.			
III				
76	Interest, Items 1 to 47, inclusive, 3¾%.	94,216.36	.....	94,216.36
	Grand Total	$2,761,280.99	$66,344.36	$2,694,936.63

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SUMMARY D.

PRESENT VALUE OF PROPERTY OF MANUFACTURERS' RAILWAY.

I. C. C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
I	ROAD.			
1	Engineering	$ 69,141.08	None	$ 69,141.08
2	Land for Transportation Purposes	557,349.50	None	557,349.50
			Appreciation	
3	Grading	66,838.15	$ 1,471.89	68,310.04
			Depreciation	
6	Bridges, Trestles and Culverts	112,224.29	4,633.32	107,590.97
8	Ties	47,820.64	18,259.71	29,560.93
9	Rails	77,624.05	8,135.93	69,488.12
10	Other Track Material	53,045.61	6,865.88	46,179.73
11	Ballast	36,584.75	None	36,584.75
12	Track Laying	44,634.25	None	44,634.25
15	Crossings and Signs	6,343.00	2,309.00	4,034.00
16	Station and Office Buildings	39,764.34	5,589.43	34,174.91
17	Roadway Buildings	6,277.53	1,166.01	5,111.52
18	Water Stations	820.00	24.60	795.40
19	Fuel Stations	1,431.04	88.69	1,342.35
20	Shops	124,630.09	1,498.65	123,131.44
30	Power Substation Buildings	1,512.00	15.12	1,496.88
35	Miscellaneous Structures	2,815.00	422.25	2,392.75
36	Paving	23,801.05	3,227.27	20,573.78
37	Roadway Machines	67.50	7.50	60.00
38	Roadway Tools	805.29	201.32	603.97
44	Shop Machinery	43,410.53	597.14	42,813.39
46	Power Substation Apparatus	2,362.00	80.70	2,281.30
47	Unapplied Construction Material	3,015.90	None	3,015.90
			$53,122.52	
			App. 1,471.89	
	Total Road	$1,322,317.59	$51,650.63	$1,270,666.96
	Present Value of Leases	757,102.00		757,102.00
II	EQUIPMENT.			
51	Steam Locomotives	$ 79,716.00	$12,130.00	$ 67,586.00
53	Freight Train Cars	71,756.00	1,057.10	70,698.90
57	Work Equipment	3,156.54	1,506.63	1,649.91
	Total Equipment	$ 154,628.54	$14,693.73	$ 139,934.81
III	GENERAL EXPENDITURES.			
	Interest, Items 1 to 47, inclusive, 3¾%.	$ 47,650.01		$ 47,650.01
	Grand Total	$2,281,698.14	$66,344.36	$2,215,353.78

Page 54 **The Witness** (proceeding): The first summary is "A," which shows the value of the entire property operated by the Manufacturers' Railway. This valuation includes all tracks, however colored, upon the map. The amount of that summary, under the head of "Cost of reproduction new," is $3,627,410.65; "Depreciation," $83,558.16; "Present Value," $3,543,852.49.

Gov. Folk examining: By "51 steam locomotives" in "Summary A," I do not mean that the Manufacturers' Railway owns 51 steam locomotives. You will notice at the head of the statement "I. C. C. Item" 1, 2, 3, 4 and so on, and "51" refers to the number of the account which includes "steam locomotives"; I value these steam locomotives owned by the Manufacturers' Railway at a reproduction value of $79,716.00. There
Page 55 are seven locomotives; as shown by Exhibit 3, Account 51. There are 81 freight cars, as shown by Account 53.

"Summary B" covers the value of the railway property represented on the map by tracks colored red, and owned by the Anheuser-Busch Brewing Association. By far the greater part of these tracks can be and are used by shippers other than the Brewing Association;—

> "**Mr. Esterline**: I move to strike out that last statement on the ground that the witness has not shown definite knowledge on the subject, and it is a conclusion."

The Witness (proceeding): —the exception being tracks constituting what is known as the Ninth Street Yard, and certain other tracks colored red in the First Street Yard, at the foot of Dorcas Street, and in the Eleventh Street Yard; and the value of such tracks and real estate clearances appurtenant thereto are set forth in a special statement, "Summary B-1."

Page 56 By saying that the greater part of these tracks in "Summary B" can be used by shippers other than the Brewing Association, I mean that free and convenient access can be had from the streets to the yards and between the tracks in such yards.

"Q. Then you further say that by far the greater part of these tracks are used by shippers other than the Brewing Association?"

Mr. Esterline: That is objected to as leading.

Mr. Andrews: Q. How did you ascertain that?

A. By observation and as the result of inquiry.

Gov. Folk examining: I valued the yards and tracks of the Anheuser-Busch Brewing Association, in valuing the Manufacturers' Railway property, for two reasons: One is that it occurred to me that the Manufacturers' Railway would find it useful to have a valuation of their entire property. It was impossible for me to tell in the beginning what information I might be called upon to supply in regard to the value of different portions of this property, individual tracks, groups of tracks, or what not. The other reason is that in my judgment as a railroad man it is just as proper to value the tracks that serve the Anheuser-Busch Brewing Company as it is the tracks that serve any industry anywhere—brick yards, coal yards, or anything else. I included the plant facilities in that valuation. It includes every bit of rail that is operated by the Manufacturers' Railway Company.

Page 57 "Summary A" includes the value of all tracks operated by the Manufacturers' Railway, including those belonging to the Brewing Association.

"Summary B" sets forth the value of the tracks owned by the Anheuser-Busch Brewing Association, that is all.

So far as I know, none of the other industries down there own track plants. I think the St. Louis Refrigerator Car Company owns its tracks in the building. I did not include those tracks, but only the leads that
Page 58 extend to the first track. I think I might have included the value of the Refrigerator Car Company tracks in its building, but I did not. I had no instructions not to. It seemed to me that it was a different facility from the other facilities, with reference to being a traffic producer, although it does produce a certain kind of traffic. The materials used in the construction of cars go into the plant, and finished cars come out. Those tracks are included, except the tracks in the brick building itself.

With reference to the yards and tracks owned by the Anheuser-Busch Brewing Association, I include all the tracks, inside and outside, but those inside of the buildings are designated as tracks belonging to the Anheuser-Busch Brewing Association; and, as will afterwards appear, the value of the tracks colored red, belonging to the Anheuser-Busch Brewing Association, is taken from the total value of the property for the purpose of arriving at the valuation of that part of the property
Page 59 which is covered by the lease.

"Q. So you would not value the tracks and yards of the Anheuser-Busch Brewing Association in arriving at a valuation of the Manufacturers' Railway any more than you would value the tracks owned by the St. Louis, Iron Mountain & Southern Railway?

A. I certainly would value the tracks of the St. Louis, Iron Mountain Southern if they were leased to and operated by the Manufacturers' Railway. Yes, I would include them. I would take cognizance of the fact that those tracks composed or constituted a part of the system of the Manufacturers' Railway."

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The tracks and yards of the Anheuser-Busch Brewing Association mentioned in "Summary B" are leased to the Manufacturers' Railway at an annual rental of $24,000 a year. They are maintained by the Railway Company. The yards and tracks of the Anheuser-Busch Brewing Association are leased for $24,000 a
Page 60 year, and the Railway Company keeps up the tracks, and keeps the yards in repair. The Anheuser-Busch Brewing Association makes no use whatever of these tracks. Whatever use is made of the tracks is made by the Manufacturers' Railway. The Anheuser-Busch Brewing Association has no power, no means of moving cars from one part of the plant to the other. All of the railway service in or about the plant, or in connection with the Manufacturers' Railway or the Anheuser-Busch Brewing Association, is moved by the Railway.

They occasionally use the Manufacturers' Railway engines to shunt cars from one part of its tracks to another, just as they do from one part of an industry to another, in various plants in the city of St. Louis, and elsewhere. That service is performed by the Manufacturers' Railway for $1.00 a car.

"Q. Cars are brought from the junction point of the St. Louis, Iron Mountain & Southern at a switching rate of $2.00 a car under the city ordinance of the city of St. Louis? A. That depends upon circumstances, but I wish to say in regard to these matters about which you are now questioning me that at present Mr.
Page 61 Moore is more competent to testify than I am. I have only a passing knowledge of the details of the operation of this road, of the character or the details of its operation."

Direct Examination by Mr. Andrews resumed: My "Summary A" covers all the tracks in the map (Ex-

hibit No. 1), whether colored red, yellow, green or brown; so that it purports to cover all the tracks indicated on Exhibit 1; except such tracks as may be within an enclosure such as a building or house, like the Refrigerator Car Company. I did not include in that estimate the tracks, if any, within buildings of the Anheuser-Busch Brewing Association. The estimate runs to the building, not into it, in all cases, whether the building is of the Refrigerator Car Company or the Anheuser-Busch Brewing Association; but the estimate does cover all tracks up to the various buildings.

Page 62 **Examination by Gov. Folk**: My valuation does not include the tracks in the Refrigerator or other buildings; but with reference to the brewery it includes all of the tracks within the enclosures and up to the point where they enter the buildings. There are 3.86 miles of track owned by the Anheuser-Busch Brewing Association, as of January 1, 1915.

I don't know anything about the item of $36,000 a year rental which you say appears in the report of the Manufacturers' Railway Company to the Interstate Commerce Commission as rental for about six miles of track leased from the Anheuser-Busch Brewing Association, nor what six miles they are. I got my figure, $24,000, in the lease from the Anheuser-Busch Brewing Association to the Manufacturers' Railway of the

Page 63 properties within the boundaries of that lease, between Lynch Street, Utah Street, Thirteenth Street, and First Street. I did not know that on January 1, 1915, the Manufacturers' Railway was paying $36,000 a year to the Anheuser-Busch Brewing Association.

"**The Witness**: I would like to correct the record in regard to the estimate of the value of track within buildings. The red tracks may and do extend into the

buildings. In referring to the map, where the red tracks are joined on to yellow tracks shown by the plan, the extensions colored red are in the building and are owned by the Brewing Company, and the value of the tracks in the buildings (the tracks colored red) is computed."

The tracks in the Refrigerator plant building were not valued. It was very doubtful whether it was a commercial enterprise, in the sense that the other plants were—whether it furnished business. It was an enterprise within an enterprise, or it was so considered.

Page 64 **Examination by Gov. Folk:** I did value the tracks inside of the buildings of the Anheuser-Busch Brewing Association. My valuation includes all of the tracks owned by the Anheuser-Busch Brewing Association, including not only those within the enclosures, but the tracks within the Anheuser-Busch buildings as well.

I did not value the tracks of the Refrigerator Car Company, because I thought they did not furnish business for the Manufacturers' Railway. That was the criterion I adopted; I think that was the dominant reason. The business that goes from the Refrigerator Car Company consists of finished or repaired refrigerator cars. They use materials to construct these cars, and get them over the Manufacturers' Railway.

As I said a little while ago, it is possible that the value of this track should be included, which can easily be done.

Direct Examination by Mr. Andrews (resumed): I have excluded them in "Summary A."

Page 65 "Summary B" covers the value of the Railway property represented by tracks colored red on the map, and owned by the Anheuser-Busch Brewing Association.

By far the greater part of those tracks can be and are used by shippers other than the Brewing Association, the exceptions being the tracks constituting what is known as the Ninth Street Yard, and certain other tracks colored red in the First Street Yard at the foot of Dorcas Street (I am reading from "Summary B"), and in the Eleventh Street Yard; and the value of such tracks, and the real estate clearances appurtenant thereto are set forth in a special statement, "Summary B-1."

"Summary B-1" covers the cost of tracks included in "Summary B," being tracks in use by shippers other than the Brewing Association. I am giving now the value of those tracks.

ge 66 "**Gov. Folk**: Q. The question I ask is whether you have included in your valuation of the Manufacturers' Railway property the value of the tracks and appurtenant right-of-way used exclusively by the Anheuser-Busch Brewing Association?"

A. Yes, sir; that is, I have first stated in "Summary A" the value of the entire property operated by the Manufacturers' Railway Company, regardless of whether it is owned by that Company or by the Anheuser-Busch Brewing Association. In "Summary B" I have stated the value of the yards and tracks owned by the Anheuser-Busch Brewing Association, most of which tracks can be and are used by others.

In "Summary B-1" I have set forth the value of those certain tracks comprised in "Summary B" and the appurtenant right-of-way, which are used exclusively in the service of the Anheuser-Busch Brewing
ge 67 Association, which operates no tracks.

"**Gov. Folk**: Q. Have you added that total of $159,382.09, the value that you give to the tracks and appur-

tenant right-of-way used exclusively by the Anheuser-Busch Brewing Association to the value of the Manufacturers' Railway?'' A. No, sir; I worked the other way. I took the value of the whole property, and then I am going to proceed to take the value of the tracks colored red from that, to show what does belong to the Manufacturers' Railway outside of this. I did not make it a part of my total.

Direct Examination by Mr. Andrews (resumed):

''Summary C'' is a valuation of the property of the Manufacturers' Railway obtained by deducting the amount in ''Summary B'' from ''Summary A,'' for the purpose of showing the value of said property other than designated by tracks colored red, which are owned by the Anheuser-Busch Brewing Association.

The valuation represented in ''Summary C'' includes the value of the right-of-way and the property occupied by all tracks other than those colored red.

As the latter belong to the Anheuser-Busch Brewing Association, the right-of-way which they occupy also belongs to that Association. The use of these tracks designated in red and the property upon which they are located, is enjoyed by the Manufacturers' Railway under the terms of the lease.

Page 68 ''Summary B'' is the red tracks; ''Summary C'' I have explained.

''Summary D'' gives the present value of the property of the Manufacturers' Railway Company, as distinguished from the real, actual, physical property owned by the Anheuser-Busch Brewing Association, taking cognizance of the existence of the lease.

The grand total present value in ''Summary C'' is $2,694,936.63; and in ''Summary D,'' $2,215,353.78.

Q. What makes that difference between these two summaries? In ''Summary C'' you have ''Land for

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transportation purposes'' valued at $1,747,468; in ''Summary D'' you have ''Land for transportation purposes'' valued at $557,349.50. How do you account for that, and why this change? A. ''Summary C'' takes into consideration the actual square foot values of the clearances or right-of-way required by the tracks within the boundaries of what you call the ''middle zone,'' or the large lease. As this property is covered
age 69 by the lease, it is manifestly improper to include the value per square foot of the right-of-way, because that is physical valuation of the property.

Second, in arriving at ''Summary D'' (which expresses the value of the property under the conditions under which it is held and operated by the Manufacturers' Railway) the square foot value of the land occupied by the tracks within the leased area is omitted, and the value of the realty used is that appertaining to the land for which the company holds conveyances in the form of deeds. Then the value of the lease is taken into consideration by the real estate valuators.

Examination by Gov. Folk: The real estate valuators valued the lease, and I took their valuation of the real estate and on the lease. I show the value of the lease at $757,102. That was the value of the lease to the Manufacturers' Railway, as I understand it. Concerning the value of that lease to the Anheuser-Busch Brewing Association, that is a matter that I cannot testify about. They will have to testify as to that.
age 70 And as to the value of the lease to the Manufacturers' Railway, I have no knowledge of that except what they gave me.

Direct Examination by Mr. Andrews (resumed): Turning back to ''Summary A,'' which I say includes all the tracks shown on the map, whether owned or leased by the Manufacturers' Railway, in Item 2, I say,

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"Land for Transportation Purposes, Present Value, $2,313,012.00." That represents the market value of the land covered by the railroad as shown in that map.

I show in "Summary C," "Land for Transportation Purposes, Present Value $1,747,468." That purports to show the market value of the land used for railway
Page 71 purposes outside of the boundaries of the leased land.

In the final summary, "Summary D," showing the present value of property of the Manufacturers' Railway, I have "Land for Transportation Purposes, Present Value $557,349.50," which is the market value of the property owned and covered by deed to the Manufacturers' Railway Company.

I have another item, "Present Value of Leases, $757,102"; that is the present value of the lease for which the Railroad Company pays $24,000 a year, as given to me by the real estate experts, for the existing term of the lease.

I find the present value of the railway property of the Manufacturers' Railway Company to be $2,215,353.78; that is, the value of the property owned by the Manufacturers' Railway Company, and not by the Anheuser-Busch Brewing Association.

Page 72 I used cost data in reaching the results in my valuation as follows: Various unit prices were used for estimating the cost of reproduction of the property, and with respect to the grade of yards and tracks, which are most economically constructed by teams, it was found that in the contracts under which most of the work had been constructed, where the price was 30 cents per cubic yard for material hauled within the limits of, say 500 feet, and as the surplus material from all of the excavations must be hauled away from these yards and tracks, the entire district being closely built up and occupied, and as the river front is the nearest

site for a dump for such material, the cost of the haul from the excavation to that dumping ground has been added to the base price of 30 cents. On repairs in other than densely occupied districts the contract price is 1¼ cents per cubic yard for each 100 feet of distance hauled, measuring from the center of mass of excavation to the center of mass of dump. All of this material must be hauled across busy street car lines and across the yards of the Iron Mountain and St. Louis Transfer Railways, and the delay incident to such crossings increases the cost of haul beyond that met in work not subject to these restricting conditions. A price of 1½ cents per cubic yard for each 100 feet hauled, with no free haul allowed, should express this difference in cost, and the prices for hauling the surplus excavations from the various yards and tracks have been made on this basis.

Page 73 The distance from the Thirteenth Street Yard to the dump is 4,800 lineal feet, and the cost of surplus excavation, that is, excavation not required in grading the yard itself, is 1½ times 48 plus the base price of 30 cents, or $1.02 per cubic yard. On this basis the prices for surplus excavations used for estimating reproduction were determined as follows:

Thirteenth Street Yard, Dorcas Street line, distance hauled 4,800 lineal feet; price per cubic yard, $1.02. Eleventh Street Yard, Dorcas Street line, 3,700 lineal feet, 85.5 cents. Ninth Street Yard, that is the High line, 3,500 lineal feet, 82.5 cents. Seventh Street Yard, High line, 3,000 lineal feet, 75 cents per cubic yard. Dorcas Street line, 1,600 lineal feet, 54 cents per cubic yard. High line, 2,600 lineal feet, 69 cents per cubic yard. For excavations hauled within city limits not exceeding 500 feet, 30 cents per cubic yard.

The loading yard on the High line, between Broad-

way, Second Street, Pestalozzi and Arsenal Streets, if reproduced, at the present time, would be excavated by steam shovels and hauled in trains over construction
Page 74 tracks to the dump on the river front. Under usual conditions of railroad work, performed in other than city districts, the cost of this work would be 30 cents per cubic yard. The conditions surrounding this particular work impose some restrictions which would increase the cost. The tracks necessary for hauling the material from the excavation to the dump would cross the main line and sidings of the two other railroads, the Iron Mountain and the Transfer Railways. This would necessitate not only expensive work for installing the construction tracks, but the passing of switch engines and trains would delay the delivery of excavated material to the dump, and hence the steam shovel forces in the excavation, increasing the cost of performing the work, or, as an alternative, require the construction of a temporary overhead crossing of these tracks, which would not be justified by the amount of material to be moved, namely, 107,000 cubic yards. In ordinary railroad work the contracts provided for the payment of 2 cents per cubic yard for all material hauled across the railroad track (notably the Atchison, Topeka & Santa Fe Railway contracts) under which allowance is made to cover the cost occasioned by such delays. As there are six operated tracks to be crossed, a fair allowance as an addition to the base price of 30 cents would be:

6 tracks crossed at 2 cents per yard.....	$0.12
Additional construction cost, $4,000.....	0.04
Increasing cost per yard.....	0.16

or a total cost for excavating, hauling, dumping and
Page 75 spreading the material from the loading yard of 46

cents. The prices determined above are used as unit prices in determining the cost of reproduction.

The unit prices used in estimating the reproduction of the masonry retaining walls at the different yards are those found in the later contracts under which this class of work was performed. The section of the wall and its location affects the cost of the work. In a wall of large cross-sectional area the cost of forms and the labor of placing the same will be less than in thin walls. Similarly, the cost of forms will be greater for curved than for straight walls, and for thin parapet walls more than for massive work. The prices are regulated in accordance with the current practice, with respect to concrete work, and the current prices. Those unit prices have been referred to in a foregoing statement of mine in regard to masonry.

Reference has also been made to the bridge or viaduct which extends over the Iron Mountain, the Transfer Railway and the Dorcas Street line of the Manufacturers' Railway: The length of the entire viaduct is 2,155.67 lineal feet, 855.67 lineal feet consisting of a steel structure on concrete footings, and 1,300 lineal feet of re-enforced concrete U-shaped abutment approaches.

Page 76 The foundation at the western end of the viaduct structure is rock, which sloped off toward the river, hence re-enforced concrete piles were required. Practically all of the work was constructed by contract, and I will state the amounts of the various contracts and charges against the viaduct: F. C. Mueller & Bro., concrete approaches, column footings and concrete piles, $43,901.77. H. P. Hubbell, steel work, railings, and foundation bolts, $54,454.00. McKeesport Steel Construction Company, decking and track work on steel portion, $3,231.54. Mississippi Valley Construc-

tion Company, re-enforcing bars for concrete work, $5,365.34. Cinders purchased, freight, etc., at 57 cents per cubic yard, $4,959.00. Western Union Telegraph Company, raising wires, $200.21. R. W. Hunt & Company, testing cement and re-enforcing rods, $135.93.

Part of the work was done under various contracts. In the macadam streets, on Second Street between Dorcas and Rutger Streets, the Hoosac Building & Construction Company performed this work on force account, namely, cost plus 15 per cent. The payments to them Page 77 from the week ending October 17, 1908, to December 16, 1908, totaled $12,028.34, the distance covered being 7,500 lineal feet, and the price thereof being $1.60 per lineal foot.

There was an abandoned street car line in this street and the ties for it had to be removed. The surplus material from the street, which consisted of two-thirds of total excavation, was hauled an average distance of one mile to make the embankment for yard tracks along the river front.

The following is the cost per lineal foot of the work for the various items under this contract:

Excavation in macadam street, per lineal foot	$0.7114
Hauling to dump	0.2853
Laying track and ballast	0.3703
Repairing street	0.1017
Transporting track material	0.0847
Treating ties, labor only	0.0472
	$1.6006

which justifies my statement made in the first place about the contract of the Hoosac Building & Construction Company, amounting to $1.60 per foot.

On Second Street, between Dorcas and Potomac, the

National Construction Company performed this work on force account, namely, cost plus 15 per cent, the payments to them from the week ending July 14, 1906, to August 31, 1908, were $5,206.10, the price being $1.58.
Page 78 This covered the cost for excavating for track in an old macadam street, laying and surfacing track and street. The cost is practically the same for both pieces of work.

On the basis of these costs the following unit prices are used: Excavation in macadam streets, $1.00 per lineal foot; track laying and surfacing in macadam streets, 60 cents per lineal foot.

A contract for the Thirteenth Street Yard provided for track laying with cross T or girder rail, its spiking, bolting, etc., including special track work, the alignment and blocking of the track, and all material and labor for the concrete required. All excavation and the paving is provided for in another item, and the specifications provided that no deduction be made in the paving estimate for the concrete base within the nine feet occupied by the track structure, and that all tracks between point of switch and heel of frog should be allowed, both in the main track and in the siding, this latter to compensate for additional labor occasioned by turn-outs, etc. The contract price was $1.80 per lineal foot, and as this price agrees very closely with the other data examined, it is used for tracks similarly situated.

On viaducts and masonry approaches the contracts for the track laying on the viaduct provided a price of $1.00, and this price is used in this valuation.

Page 79 In handling material the assumption made in arriving at the prices shown as the cost of reproduction is that the material for track is received and stored at a supply yard previous to its being laid in the track, in

order to avoid delay, which would inevitably follow if it were not ordered and delivered until the roadbed had been prepared for it. This involves the unloading of the material in the yard from the cars in which it is shipped, and reloading onto construction trains when required for the laying of the track. The cost of this service is based upon long experience and is, for rails, joints, track fastenings and appurtenances, 40 cents a ton; for ties, 3 cents each, and these prices were used.

Special track work with 85-pound rail: Voucher of the United Railways Company dated December, 1905, for labor of installing three crossings, one at Broadway and Dorcas, and one at Seventh and Dorcas, and one at Ninth and Dorcas, a total of $1,058.75.

I thus got my cost prices largely from these contracts above referred to, and similar ones.

As to the realty valuation, I have stated that it was given me by the real estate experts of this city, namely,
Page 80 Julius Pitzman and E. A. Hildenbrandt.

As to cost data for the shop buildings: Since the shop and engine house at the foot of Dorcas Street was completed in September, 1913, and there have been no material changes in the cost of labor and material between that date and the date of this valuation, the vouchers in payment for the work to contractors and others have been used in this estimate, supplemented when necessary by information obtained by the engineers in the field. The buildings included in the estimate are all constructed on "made" ground, the filling over the original ground surface being fifteen to twenty feet in depth. This condition necessitated the construction of very expensive foundations. All of the walls of the building and the foundations for the transfer table and heavy shop tools are supported on reenforced concrete piles. The aggregate length of such

piles in the foundations is 12,719 lineal feet, and their cost in place is $14,372.56.

The office and storeroom and the transformer station (two buildings) were constructed at the same time as the shop and engine house building. This work, as well as the installation of the heating and electrical apparatus and wiring, was done under contract. The cinder pit with the depressed track, and the tracks within the buildings, were constructed by the Com-
age 81 pany's forces. In the former case the cost was determined from the labor distribution statements, and the tracks were estimated from engineers' field notes. The water supply is from the city mains, tne laying of which was done by contract, the Company furnishing the material.

The following statement shows the cost of the various items:

Shops and engine house at Main and Dorcas Street: Contract price, building above foundation	$56,689.00
Concrete piles, 12,719 feet, at $1.13, contract.	14,372.56
Re-enforced concrete ducts for heating system	6,117.80
Installation of air and water lines, drinking fountain and 3-inch water supply	1,182.30
Boiler foundations, heating system	491.90
Extras	4,221.91
Total	$83,075.47

Voucher No. 4953, C. Hartman Contracting Company, December 5, 1913.

Heating plant for shop and engine house:	
Contract	$ 9,192.00
Extras	689.93
Total	$ 9,881.93

I took the values of those buildings directly from the vouchers by which the payments were made.

Page 82 They were finished in 1913, and there has been no material change in the cost of material or labor since then.

I estimate their value at the contract price.

Final settlement shown on voucher	$10,379.93
Less installation of radiation in store room	498.00
Charged to shop buildings	$ 9,881.93

Voucher No. 5168, Peters-Eichler Heating Co., January 23, 1914, wiring and electrical work for shop and engine house, invoices, $7,957.61.

Voucher No. 5158, Guarantee Electric Co., November 24, 1913.

Miscellaneous items (by the same firm):

Three-panel switchboard	$ 582.00
324 Mazda lamps	134.12
40 steel wall lockers	160.00
12 locomotive smoke jackets	1,656.00
Various vouchers	$ 2,532.12

Mr. Andrews: Q. It was not my intention to ask you to go into all the details in reference to these various items, but the object of my question was to ascertain from what cost data (without giving us the specific details as you have) you used in reaching the results arrived at in your valuation; that is, your general method, and from what sources, is what I meant? A.

Page 83 By recourse to the vouchers under which the work was performed, which are on file in the office of the Company, and also to the records of the office of Mr. Edward Flad, who was chief engineer of construction during the prosecution of a large part of the work.

Q. That data would give you the cost to the railroad company of those things. Did you not exercise your judgment in ascertaining the present value of these particular items that you have referred to? A. Yes, sir; those are depreciated by the summaries and under the various accounts; that is, where there was any depreciation. I made my present value on the present value of the railway. I do not undertake to say that this valuation arrived at by me is the cost valuation new, except where the prices that applied in the vouchers and estimates were practically the same as of today, and that seemed to furnish the best evidence as to the cost.

I took into consideration what it would cost today to reconstruct these various properties which I have described.

I think I have explained what I meant by appreciation in value of certain items. It relates particularly,
Page 84 or altogether, I may say, to the solidification of embankments which always settle after they are first constructed, and for some time afterwards, and which have to be added to to bring them to the proper grade in order to make the settlement good. That is, the yardage can be satisfied by the first deposit of material, and then it settles and additional yardage must be deposited in order to bring that up to the grade. However, the amount of appreciation in this estimate is very, very small; it is only $1,472.00. It doesn't amount to anything.

I have explained the basis on which I depreciated certain items. Depreciation, as included in this estimate, covers that depreciation which has not been made good by current maintenance, as in the case of concrete masonry, for instance. There is nothing that can be done to concrete masonry, or it is not policy to

do anything to it to repair it until the deterioration becomes sufficient to warrant the undertaking; that is, there may be very slight defects which in themselves do not threaten the structure. However, they exist, and if they have not been made good the amount of that deterioration, as measured by the cost of making that good had been measured by inspection.

The wearing value of rails has been determined in the manner stated, the rails have been inspected in the tracks, and the amount of wear has been noted and the percentage of depreciation has been estimated.

Page 85 The cross ties have all been counted and their condition has been observed. The balance of longevity that they have has been noted, and the total depreciation of the value of ties arrived at in that way.

The buildings have been depreciated according to the rule established by the United States Government, and steel structures have been depreciated upon the basis of the current practice in regard to them, which gives them, as I recall it, a life of eighty years.

In arriving at the present value of this railway I have not added to the value of the physical structures as a separate item a value commonly known as "going concern" value, nor did I include in the valuation any sum for the value of the franchises, either from the State of Missouri or the City of St. Louis.

I am aware that the State Board of Equalization of Missouri, in 1914, assessed the Manufacturers' Railway Company, under the head of "All other property," which means intangible property, namely, the privilege by franchise from the State to operate a railroad, the sum of $209,300.00, on which the Company paid taxes.

That is a matter of record on page 108 of the Journal of the Board of Equalization for the year 1914.

Page 86 In Summary "C," in which I find the present value

of the railway as of January 1, 1915, to be $2,694,936.63, I have excluded therefrom the cost of reproducing what you call the "Shipping Yard" which I estimate at $142,678.48, exclusive of the value of the real estate embraced therein and the engineering cost.

I have also excluded from the valuation in Summary "C," the Ninth Street Yard, and the 12 red tracks in First, Eleventh, and the foot of Dorcas Street Yards.

In valuing the real estate I excluded the real estate in the street crossings and in the streets covered by the tracks.

I consider the valuation shown in Summary "C" a conservative one.

Page 87 **Cross-Examination by Mr. Esterline:**

The last railroad position which I held was that of vice-president of the Atchison, Topeka & Santa Fe Railway, with which I severed my connection in 1911. Since six months thereafter, I have been engaged continuously in my present occupation or profession. I have had an office continuously in Chicago, and also one in New York, for two years. I was employed to do the work about which I have testified, about January 1, 1915, by Mr. Daniel N. Kirby, of the firm of Nagel & Kirby. I was in Chicago and he was here. He called on me just before Christmas, as I recollect it.

Page 88 At that time I had no knowledge of the property of the Manufacturers' Railway Company which would enable me to give testimony in this case as to details, although I had business connection with them about a year before. Something more than a year ago I went over the property. I had known Mr. Kirby before the date of my employment in December.

When he called on me and I was employed, the subject-matter and the nature of that conversation was, that the Manufacturers' Railway Company desired to

Page 89 have a valuation made of their property, and the information in regard to that valuation collected and recorded in such a way that it could be made the subject of testimony. That the same interest also desired to have a valuation made of the St. Louis and O'Fallon Railway Company, which they also controlled, or some part of it. That is all, I think. I was not then told that this suit had been commenced.

I said, that I was to prepare the information in such a way that it might be made a matter of testimony in a case, not this case; in any case. I knew that a suit had been commenced, but I had very little idea of what it was. According to my recollection Mr. Kirby did not acquaint me on that occasion with the subject-matter of the litigation. Our conversation was over the telephone and it was not very long.

Q. You were made acquainted with the order of the Interstate Commerce Commission and the effect of its terms, were you not? A. On coming to St. Louis I was given the record in the case, and the record in connection with the previous hearings before the Interstate Commerce Commission, and I read the matter contained in the record of the case, or cases.

Page 90 I came to St. Louis six weeks ago yesterday morning, and took up my headquarters here in the office of the Manufacturers' Railway, 2925 South Broadway. I was told of the nature of the work which I was expected to perform, and was furnished a copy of the record of the evidence and proceedings of the hearings before the Interstate Commerce Commission.

Q. You were also told that you were to investigate into certain facts which the Manufacturers' Railway Company wanted to prove in this case, were you not? A. No, sir; I was asked to make a valuation of the property. Mr. Kirby asked me to do that.

Q. You fully went over the entire matter of the valuation of the property with Mr. Kirby before you began
Page 91 making your investigation, did you not? A. I fully went over it, but it was comprised practically in the statement that they wished to have a valuation of the property made.

Q. I understand, but I say you went over the record of the evidence and the proceedings before the Commission and were familiar with the facts and circumstances of the situation when you commenced to make your appraisement? A. After I commenced, yes, sir; naturally, there were about ten days spent in gathering the data from the field, perhaps more. During that time I had comparatively little to do in the office, so from time to time I devoted myself to reading the record.

Q. Mr. Kendrick, will you please state just what you were retained to do? A. I have. To make a valuation of the property of the Manufacturers' Railway in the City of St. Louis; also to make a valuation of the property of the St. Louis & O'Fallon Railway in East St. Louis, east of the river.

Q. But when you say "make a valuation" that is most general, Mr. Kendrick. Could you not give more in detail what you mean by "making a valuation," what you were to do, how you were to do it, and for what purpose? A. I was to make a valuation of the property, that is, to ascertain what it would cost to reproduce that property as of January 1, for instance; to secure such data as was afforded by the records to substantiate the valuation, or serve as a basis for it, or, any and all data that might throw light upon the
Page 92 problem with respect to the arrangement under which the road was constructed, and the amounts that were paid for a certain part of the line, or for all of it, or

for the appurtenances, such as equipment; everything, in fact, that went into the construction of the line, that would help to establish the present reproduction cost, or cost of reproduction of the property. Does that fully answer your question?

Q. That will do for the present. What arrangements, if any, had you with Mr. Kirby about completing your work and submitting reports to him, or his Association, before you gave any testimony in the case? That was fully understood, was it not? A. No, not in terms. We naturally had conferred.

Q. You knew when you were first retained that you were to be a witness in the case, did you not? A. I knew I was to be a witness in the case. I wish to state that never at any time has there been any course pursued looking to the molding of my opinion upon any particular line. I am a free agent. I have an opinion of my own, which I formed. It is not Mr. Kirby's opinion; it is not Mr. Andrews' opinion. It is mine.

Q. I understand, but you do not object to my inquiring as to the— A. No, not in the least, but I want to make that clear. I thought perhaps it would abbreviate the matter somewhat.

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Q. You did make a complete report to Mr. Kirby, did you not, and submitted it to him before you testified in the case? That is true, is it not, Mr. Kendrick? A. I gave him the report Saturday night. I commenced to testify yesterday morning. I did not receive any intimation from him between Saturday night and Monday morning that I should testify thus or so.

Q. I understand, but he had your report when you came to testify? A. Certainly; that is what it was made for. I knew that the reports which Mr. Andrews and Mr. Kirby had were copies of the one I had and were the copies which I furnished them.

Q. I understand that during the preparation of that report you were in conference and communication at all times with Mr. Kirby and the officers of the Manufacturers' Railway Company? A. There were very few conferences, very few. They did not know what I would find. They were not in a position to assist me very much in ascertaining facts. I was here to ascertain facts, which I endeavored to do.

My assistants were Mr. Higgins, Mr. Wymond, and two men who had special charge of the field work. Mr. Higgins is an office associate, my assistant. Mr. Mark
ge 94 Wymond is another man of my office. I don't remember the names of the other men. They were men that were gotten in for the occasion. Their business consisted in making the necessary measurements in the field. I can get you the names if you like. There was no one connected with the Manufacturers' Railway or the Anheuser-Busch Brewing Association, except a draftsman, Mr. Marsh. He did such work as was required in connection with the preparation of the map, and similar things.

I personally made this investigation in the yards, over the tracks and through the building, in the same sense that any one does things in person. Mr. M. E. Cooley has recently made a valuation of the Pere-Marquette Railroad. He had about one hundred men working under him. Obviously he did not do it all in person. I was here, except that I went to Chicago usually for the week-end.

Q. Mr. Kendrick, throughout your testimony you re-
ge 95 ferred to certain yards and tracks for private use of the Anheuser-Busch Brewing Association, and certain other yards and tracks to which the public had access, or which you said were for public use. What, if anything, has the private or public use of tracks to do with

the physical value of the railroad property? A. Nothing whatever.

Q. Why was the distinction made at length in your evidence as to the so-called public tracks, or tracks for public use, and the tracks for private use? A. There was some question about the way in which this valuation should be conducted; the extent to which it should go; whether all the tracks should be included in the valuation, or whether certain of them should be excluded. After full consideration of the matter I came to the conclusion, and I now think, that that is an unimportant feature. Whosoever uses the tracks is a shipper. It makes no difference with respect to the valuation whether that shipper is the Brewing Company or the N. K. Fairbanks Company.

Having started out with some theory of that kind it was natural to follow along the course that is set out, or set forth, in the report, or in the valuation. I don't think it makes any difference about the value of these tracks, as to whether they are used by one shipper or another. It may make some difference as a revenue producer whether they are used by both the public and
Page 96 the Brewing Association, or it may not. But it was finally determined by me that the proper thing to do was to make a valuation of the property as a whole and as it was operated, including all the tracks. Of course, it was necessary to consider that part of the property that was owned by the Railway and that part that was owned by the Brewing Association and leased to the Railway, and that difference in itself led to this distinction which you observe and mention. It was property outside of the lease and property inside of the lease. Therefore, in the summary which I gave yesterday (Summary A), was set forth the value of the entire property as of January 1, 1915. Then Summary B

(being the property within the boundaries of the lease owned by the Anheuser-Busch Brewing Association), is deducted from that, and it is evident that what remains would be the property outside of the lease. That is all.

Q. When you testified yesterday at length on that subject you thought it made some difference? A. I don't think so. I don't remember having said anything that would indicate that. This railway is an instrumentality for transportation; it transports the freight of the Anheuser-Busch Brewing Association; and it transports freight of some twenty-five or thirty other people, and inasmuch as they all pay, I don't see that it makes any difference except insofar as the revenue accruing from the carriage of one product may be more profitable than that accruing from the carriage of another product.

Page 97 Q. Was the distinction between tracks used for the public and tracks used for the Anheuser-Busch Brewing Association, exclusively, considered in the terms of your employment and part of the testimony you were to give? A. No, sir; nothing was said to me by Mr. Kirby at the time he employed me. We did not go into that degree of detail over the telephone. I don't know when the matter of the use of the tracks came up. I became interested in the case because it seemed to me that it had been considered from a most peculiar standpoint in some respects, and it was a matter of personal interest to me to see to what extent the public could and did use the tracks, as manifested by the means of ingress and egress.

There was nothing said to me on that subject when I was employed. It makes no difference whatever in physical valuation of the tracks, that I can see. All of

my testimony on that subject yesterday was given and based upon the fact.

Page 98 In testifying yesterday that certain yards, for example the Eleventh Street Yard, is used by the public, I know that by having visited the yard and having found that it is accessible from the streets, and having seen cars loaded or unloaded, which, in my opinion, were not cars belonging to the Brewery or containing business for or from the Brewery. I cannot give the names of the shippers, contents of the cars, character of the cars, times when I saw them, or origin of the freight, nor can I name one. I did not interest myself in the matter to that extent. I cannot give the name or names of one or more of the shipper or shippers other than the Anheuser-Busch Brewing Association, who, to my per-

Page 99 sonal knowledge, use the shipping yard. I cannot answer questions in regard to any of these yards and business handled in them. They can be answered by the President of the Company. In testifying yesterday that the Thirteenth Street Yard was not used by the public, I meant that it is a yard used by the Brewery.

Q. Mr. Kendrick, it is true, is it not, that every foot of track in the so-called "Brewery Zone," that is, as I understand it, and if I am not right you can correct me, between Lynch Street on the north, Arsenal Street on the south, Thirteenth Street on the west, and the river on the east, and the spurs, yards and all, are occupied in some form or another by the cars and other property of the Anheuser-Busch Brewing Association? That is correct, is it not? A. Well, I presume that at times the cars of the Anheuser-Busch Brewing Association may go over those tracks. I presume there are tracks in that property upon which they go comparatively seldom. It is true that there are cars standing in those yards in great numbers.

Page 100 Q. Take that shipping yard by the ice house: Is not that yard packed with cars all the time, more or less, and so on these so-called lead tracks ending at Broadway? A. Yes, it is true, and it is more especially true of the tracks ending at Broadway, that they are occupied by cars which are loaded or intended for the Anheuser-Busch Brewing Association; and also by cars for the various packing companies, Morris & Company, and other companies that have offices on the premises.

Mr. Esterline: I move to strike that answer out as not responsive to the question and as volunteered by the witness, he having already stated that he had no knowledge of the cars of other persons in those yards.

The Witness: If I made that last statement I wish to correct it. I do intend to say that I have no knowledge of the cars of other persons in those yards.

Mr. Esterline: The witness did decline to give the names of any persons, or the times and places that he saw the cars.

The Witness: Or the numbers of the way bills.

Based upon long and broad experience in the operation of railroads and in the handling of freight at big industries, it is true that any enormous institution, such as the Anheuser-Busch Brewing Association, must in a successful and economical operation of its plant have free access to and over its plant tracks and facilities, and every part of the same at all times.

Page 101 As to the tracks marked in red, I did not mean to be understood as testifying that they were so marked because they are within building enclosures. That statement was in connection with certain tracks. The red represents tracks owned by the Anheuser-Busch Brewing Association. As to tracks within buildings and

my statement concerning them, the question arose in regard to the extent to which tracks had been valued, and I became somewhat confused and my statement was rather incorrect. I beg leave to correct it. I said with respect to the short pieces of track in red shown at various places upon the map that they might and did indicate tracks within buildings; that is, certain of the tracks which are colored red are within buildings and certain are without buildings. I think it is true that the tracks within buildings are tracks used exclusively by the Anheuser-Busch Brewing Association. When the red line ceases and another line begins that does not
Page 102 mean that the track is outside the building. It means that the ownership changes, the tracks in red being the tracks of the Anheuser-Busch Brewing Association, and the other tracks all belong to the Railway Company.

I can point out on the map the respective yards where the red lines end at the door, we will say, of the building: In the First Street Yard, between Arsenal and Dorcas Street, east of Second; in that case the red line would indicate tracks within buildings, and the red lines not only indicate that, but also ownership in the Anheuser-Busch Brewing Association, whereas the yellow lines represent only tracks that are owned by the Manufacturers' Railway. That is illustrative of them all, but not all of the red lines. For instance, "Shipping Yard" represents tracks which are not in buildings except in the sense that there is a freight shed over those yards.

At the top of the map, in the Ninth Street Yard, a portion of these tracks are in buildings and a portion are in the yard with no cover; again, in the Eleventh Street Yard, a portion of the tracks west of Eleventh Street are in buildings, and the same is true in regard

to the Thirteenth Street Yard. A portion of the tracks colored red extending toward Pestalozzi Street are in buildings.

ge 103 In the First Street Yard; the lines in red being used exclusively by the Anheuser-Busch Brewing Association, the line in yellow outside the building, and continuing down to the junction, would also necessarily be used exclusively by the Anheuser-Busch Brewing Association, I should think, but that would not necessarily be true of all the red tracks in the First Street Yard and in the other yards.

In the Ninth Street Yard, running along by Pestalozzi Street to the south there are three red tracks, which go in one track to the street. When the track shown in red changes to green, the track shown in green would necessarily be used exclusively by the Anheuser-Busch Brewing Association, if the tracks shown in red are used for that business, and they happen to be in that case.

Going down to near the Iron Mountain tracks at a place marked "Foot of Dorcas Street Yard," are two very short tracks shown in red. They extend into the
ge 104 Glass Works and are used wholly for the business of the Glass Works, which belongs to the Brewing Association. The green line crossing Dorcas Street into the yellow would be used exclusively for the road. That is franchised track.

In Exhibit No. 2, page 22, under the subject "Land for transportation purposes": I mean by "transportation purposes" the classification used by the Interstate Commerce Commission Division of Valuation applied to any property connected with the railroad that is used for the purpose of the railroad, as contradistinguished from outlying property which is bought spec-

ulatively, or with respect to possible future but indefinite use or purpose.

Q. This expression here, "transportation purposes," is followed by property used within the middle zone, generally, is it not, over which the Manufacturers' Railway is laid and operated? A. If you mean by the "middle zone" the confines of what I call the major lease, or the portion between Lynch and Utah, Thirteenth and First, or the river, no.

Q. I will just eliminate those north of Lynch and south of Arsenal. I mean it does include the property within the middle zone? A. It includes no property within the confines of that lease. It includes certain property which belongs to the Manufacturers' Railway
Page 105 by virtue of having been conveyed to it by right-of-way deeds, and the tracts of land covered by those transfers are shown on the map with the purple or lavender boundary. The properties referred to on page 22, Account No. 2, "Land for transportation purposes," do not include any within the boundaries stated. Page 23 is a continuation from page 22 of the land for transportation purposes, referring again to the classification of the accounts of the Interstate Commerce Commission Valuation Department, and gives the square feet of the right-of-way in connection with each line, regardless of whether it extends over leased land or belongs to the Anheuser-Busch Brewing Association, and covered by lease to the Railway, attached to which quantities are the unit prices by the real estate valuators. It embraces all of the tracks, yes, sir, except those specified on other pages. It is within the boundaries of the leased land, embracing all of the tracks in all of the yards, and the yards as well.

Q. Take Exhibit No. 3, page 60, Item No. 2: The property therein scheduled is property which is used

in the operation of the Brewery as well as for the Rail-
ge 106 way Company, is it not, Mr. Kendrick, in the shifting of cars from one point to another, and the supplying of fuel and other material to the plant? A. You will excuse me. The Brewery uses no railroad property of itself. It has delegated the use of the railroad property by lease to the Manufacturers' Railway, which performs all of the transportation duties for the Brewery as well as for the general public.

Q. I understand, but if a drag of cars is moved from First Street up to the Broadway Yards, and again moved to the Ninth Street Yard, then moved back again to the Broadway Yard to permit the drag of cars to be broken, and the cars be permitted to stand there, that material, that construction work, those buildings and all of that, are used quite as much for that kind of work as for any other kind of work, are they not? A. Yes, sir; that is for that "kind of work," meaning for the business of the Brewery.

I commenced work six weeks ago yesterday. The estimates which I have made, the exhibits which I have prepared, and the testimony which I have given, I think were all based on information furnished me, except such as I acquired by my observations in the yards; that is, information either oral or in the form of
ge 107 records and files of the Company, files of the engineer who had charge of the work.

The real estate experts I named yesterday were Julius Pitzman and E. A. Hildenbrandt, both of St. Louis. I have no knowledge of their previous relations with the Anheuser-Busch Brewery Association, having first met them since coming to St. Louis six weeks ago. That is the first time I ever saw them or heard of them. I met them by going to see Mr. Pitzman first to talk with him about his valuation of the property which he

had made, and which was embodied in a letter addressed to Mr. Moore, the president of the Manufacturers' Railway. I think that was the first time I saw him. I went to see him at my own instance, proba-
Page 108 bly through conversation, and because I had a signed valuation of the realty. There was no suggestion to me from Mr. Kirby, Mr. Moore or anybody connected with the Manufacturers' Railway, or the Anheuser-Busch Brewing Association, that he was the man to see. I didn't discover him. The valuation was placed in my hands in the form of a letter signed by Messrs. Pitzman and Hildenbrandt. I had occasion to ask Mr. Pitzman some questions about it. I don't remember now what they were. I had an idea I would like to meet him; I went to his office and called upon him. I did not ask him whether he had done any work for the Anheuser-Busch Brewing Association, or the Manufacturers' Railway, and I did not find out. I do not know at this time whether either of those gentlemen ever had any connection with the Anheuser-Busch Brewing Association or the Railway, or did any work in the way of real estate purchases or valuations. And
Page 109 yet I took their word in making this physical valuation, and have given testimony based on that word. I had my headquarters at the office of the Manufacturers' Railway, the records, books and memoranda of which were supplied to me by President Moore through his auditor, Mr. Marsh. I had known Mr. Moore before that time and knew him during that time. I knew he was president of the Railway. He undoubtedly knew what I was there for. I am very glad to say that there was a perfect understanding and harmony between us at all times. He or his auditor furnished me with the books, accounts and memoranda from which I made the estimates in part.

Page 110 I have explained that we could lean upon those only to a certain extent. We got other information elsewhere; certain of it was obtained on the ground. I got some from Mr. Edward Flad. I got such documents at Mr. Moore's office as I thought were of value to me in my work; such as bore upon this matter. Those accounts, records and memorandum books are all there now in the office, so far as I know. I have had access to them since I have been here, and at any time.

Page 111 **Cross-Examination by Gov. Folk:** I am a railroad man and have, as I stated, performed a good deal of valuation. I think I am a railroad valuation expert. Valuation as a specialty is something that has but recently come upon the stage. I think the term "expert" will correctly describe me as one having knowledge of the elements of valuation and the method of their application. My client in this matter is the Manufacturers' Railway Company. I have tried to give good service and have done the best I could in this case to make a fair and correct valuation for the Manufacturers' Railway Company, which happens to be my client. In valuing the railway I did not take into consideration the use to which it was to be put, to any greater extent than as indicated by my testimony. I did not consider it as a factor of the value. The railroad is a physical instrumentality. It has a certain value.

Page 112 Q. Would you value the Manufacturers' Railway the same whether it was used for the purpose of transportation or used as a roller coaster for the employes of the Anheuser-Busch Brewery? A. I don't know that any part of it is used as a roller coaster, but I valued it as a physical thing wherever it was found, with respect to the labor and material that were embodied in

its construction, and without any reference whatever as to its use.

Q. If, as a matter of fact, the Manufacturers' Railway was used exclusively as a roller coaster for the purpose of amusing the employes of the brewery, your physical valuation of it would have been the same? A. Precisely. The use of it had nothing whatever to do with the value I placed upon it. The rails would be worth just as much in one place as in another. It was utterly immaterial whether the railway received $1.00 a car or $10.00 a car, so far as its value was concerned.

I did not value the right-of-way. I obtained the
Page 113 valuation of the right-of-way from the right-of-way valuators, Messrs. Pitzman and Hildenbrandt. I know only by hearsay what measure they used in valuing it.

Q. As an expert on railway valuation, will you say they should have valued the right-of-way with the railroad there or the railroad absent? A. They should have valued it with the railroad absent, and with reference to the construction of the railroad, or on the basis of the value, I would say, of surrounding property at the present time.

I saw the surrounding property. It is largely true that the buildings along the streets through which the Manufacturers' Railway runs are dilapidated tenements, and vacant. It runs through a rather squalid section of the city. That is peculiar to railroad territory, it is usual.

Q. You valued the tracks inside the walls of the
Page 114 Anheuser-Busch Brewery? A. Yes, sir. In valuing those tracks I did not take into consideration that they were connected with the tracks of the Manufacturers' Railway. I took into consideration only the fact that they were made of certain material; that the material

cost so much, and that the labor as estimated cost so much, to make the complete track.

Speaking of value from the standpoint of reproduction, I think there would be the same value for every two miles of a trunk line unconnected with the trunk line (through the Manufacturers' Railway), as they are by reason of being connected with the Manufacturers' Railway. I would place the same value upon those tracks inside the walls of the Anheuser-Busch Brewery if they were separated from the trunk line by two miles without any intervening connection in the shape of a railroad, if the character of the work was the same and the character of the material that entered into the construction of the track was the same. By character of work I mean character of construction. If
Page 115 the tracks had no connection with the Manufacturers' Railway they could not perform the same service, and, in the sense of the function of value attaching to the earning capacity, of course, they would have no value if they had no connection with the outer world.

Q. They would have no market value if they were unconnected with the Manufacturers' Railway, would they? A. I have not considered the market value in this proposition. My duty was to ascertain the cost of reproduction. I did not attempt to give a market value of the Manufacturers' Railway at all. I have testified that my estimate was based upon the cost of reproduction, less depreciation.

Q. You do think, though, that these rails and tracks within the Anheuser-Busch Brewery for practical purposes would be of little value if they had no connection with the Manufacturers' Railway? A. They would have a value that is represented by their cost, viewed from that standpoint. If they had no connection with the outside world they would have no value as an earn-

Page 116 ing medium. For all purposes of utility they would produce nothing. That value from a utility standpoint comes from being part of the rails or system of a common carrier.

The St. Louis Refrigerator Car Company have tracks within the buildings. I do not know that the Manufacturers' Railway pays the St. Louis Refrigerator Car Company for the latter's use of its own tracks.

Q. Do you know why, or by what process of reasoning you could justify the Manufacturers' Railway paying them as the Anheuser-Busch Brewing Association for the Anheuser-Busch Brewing Association using its own tracks? A. The Anheuser-Busch Brewing Association does not use its own tracks, Governor.

Q. They are the tracks of the Brewing Association, are they not? A. They are the tracks of the Brewing
Page 117 Association. The lease of tracks belonging to an enterprise, to a railway for purposes of operation, is not an unusual thing.

Q. But here they are within the walls of the Brewery? A. Yes, sir.

Q. They have no value for practical purposes unless connected with the tracks of the Manufacturers' Railway; these tracks within the walls of the Brewery are used exclusively by the Brewery? They are a plant facility, pure and simple, and yet we find the Manufacturers' Railway actually paying the Anheuser-Busch Brewery, to use its own tracks, $24,000.00 a year. Is not that the situation? A. The Manufacturers' Railway pays the Anheuser-Busch Brewing Association $24,000.00 for the privilege of using the tracks of the Anheuser-Busch Brewing Association. The Anheuser-Busch Brewing Association does not use its own tracks. Suppose the Anheuser-Busch Brewing Association was not interested in the railway at all: Then the Railway

Company would lease (as this Railway Company does) the tracks of the Anheuser-Busch Brewing Association as a part of its system which it would operate. I cannot see that it would make any difference that some of the people who are interested in the Brewing Associa-
Page 118 tion are stockholders in the Manufacturers' Railway. I don't believe it does make any practical difference.

Q. Suppose the trunk line were right outside of the gates: Would you say it would be proper or reasonable for the trunk line to pay the Anheuser-Busch Brewing Association $24,000.00 a year in return for the Anheuser-Busch Brewing Association using its own tracks to convey its own cars and its own beer to the trunk line outside of the gate? A. That condition does not exist. I would say it would be proper for the trunk line—

Q. You were speaking of assumptions: Now, we will assume that the trunk line is right outside of the gate? A. That trunk line is there, the St. Louis, Iron Mountain & Southern Railway Company, and for many years it operated the tracks of the Anheuser-Busch Brewing Association—two periods of ten years each, and then for an additional period of one year. That is a matter of record; I have read the record.

Q. Can you explain why the Manufacturers' Railway should pay the Anheuser-Busch Brewing Company $24,000.00 a year for the Anheuser-Busch Brewing Association to use its own tracks, and not pay the St. Louis Refrigerator Car Company anything for the St. Louis Refrigerator Car Company to use its own tracks?

Page 119 Q. The property of the St. Louis Refrigerator Car Company is within the boundaries of this lease, within the middle zone. The Manufacturers' Railway Company by the terms of that lease is given the right to use all the property; all the railroad property that is

owned by the Anheuser-Busch Brewing Association within the limits of that lease, under certain conditions as set forth. Therefore, it does have, and always has had, since that lease was made, the right to any and all such uses of the railroads leading to the St. Louis Refrigerator Car Company's plant that the Anheuser-Busch Brewing Association ever had or owned.

The St. Louis Refrigerator Car Company does not use its own tracks, and there is no consideration paid by the Manufacturers' Railway, as far as I know, according to any record I have seen, for the use of the tracks of the St. Louis Refrigerator Car Company.

Q. Can you explain why the Manufacturers' Railway should make a distinction between the Anheuser-Busch Brewing Association and other of its shippers? A. The Anheuser-Busch Brewing Association is the landlord of the railroad, or, it is the lessor.

Q. Let us leave that lease out of your mind: There is no magic in a lease— A. No, but it is a matter of
Page 120 fact; it is not magic. The Anheuser-Busch Brewing Association owns those tracks; it leases them to the Manufacturers' Railway Company. Then, as far as the Anheuser-Busch Brewing Association is concerned, it is through with them, and has no control over those tracks. They are controlled by the Railway Company. They belong to it during the term of that lease just as absolutely as if it owned them, for all practical purposes.

Q. So you think by the form or fiction of a lease a plant could lease its plant facilities to a trunk line for any amount that it pleased? A. It is not a form or fiction of a lease; it is a practical lease. It has been worked in a practical way. In my mind there is nothing extraordinary about this. It is an arrangement

which exists elsewhere. I have no doubt that in St. Louis there are a dozen cases of a similar character.

Q. If there were no tracks within the walls of the Anheuser-Busch Brewery; if there were no Manufacturers' Railway, the Anheuser-Busch Brewing Association would have to haul its beer to the trunk line by wagons and teams, would it not? A. Yes, and probably did so when it was a smaller enterprise.

Q. That hauling, of course, would be at the expense of the Anheuser-Busch Brewing Association? A. Yes, sir.

Q. By this method of having these plant facility
121 tracks within its walls and leasing these tracks to the Manufacturers' Railway, it makes what before was an expense in the way of the haul of its traffic, a source of income, it converts a liability into an asset. In other words, it makes money out of its hauling instead of having to pay for the hauling? A. No, sir.

Q. It gets $24,000.00 dollars a year for these tracks, its own tracks? A. As a return for the use of certain property that is worth very much more.

Q. But those tracks are used exclusively by the Brewery, are they not? A. No, sir.

Q. Those tracks within the walls of the Brewery? A. Oh, yes, within the walls of the Brewery, certainly. But the situation is no whit different from that which exists at times in other manufactories in St. Louis, with respect to a number of plants, reference to which was made in the past record, where tracks extend from the St. Louis, Iron Mountain & Southern, the Wabash, and other roads, to these plants, where service is performed by the trunk lines in the matter of placing cars at these plants, taking cars away from the plants, and where still other service, particularly plant service, is performed by those companies in the matter of setting

a car or moving a car from one part of the plant to another part of the plant, for which there seems to be a standard cost or charge of $1.00, in the vicinity of St.
Page 122 Louis. This property involves nothing that is peculiar. I don't know of any other plant that is the precise duplicate of this. I said I have no doubt that there are a dozen, but I did not say I knew of a dozen. I refer you to the record in this case, and mention the Christy Brick Company. I don't know how many miles of plant facility tracks they have within their walls. I don't know whether they have ten miles or one mile, but they have some track within the boundaries of the property and in and about their kilns, or,
Page 123 probably, between their kilns, which are permanent structures.

Q. But they are within the walls of the Christy Brick Company, used exclusively by the Christy Brick Company and by no one else? A. Probably not. I am unable to say.

Q. So you do not know of a single industry other than the Anheuser-Busch Brewing Association that makes a profit out of hauling its own stuff, do you? A. I don't know that the Anheuser-Busch Brewing Association makes a profit.

Q. It got $24,000.00 a year, according to your statement, and now gets $36,000.00? A. I do not think it makes a profit, considering what it has invested.

Q. It receives an income from its own hauling; and makes its own hauling a revenue producer by this device instead of an expense? A. I don't know—

Q. Do you know of any other industry so fortunate as that? A. At this moment I am unable to name another industry, but I have no doubt there are dozens of them.

Q. So far as you know, the Anheuser-Busch Brew-

ing Association is peculiarly favored in this respect? A. I think the arrangement is entirely natural.

Page 124 Q. We know, of course, that your clients, or rather, the Manufacturers' Railway is, and you naturally have some prejudice or bias in that direction, but it is not necessary for you to make an argument, Mr. Kendrick. A. I have no bias. I wish to deny bias.

Q. Do you? On the other hand the tracks of the Manufacturers' Railway Company would not be worth anything unless they connected with the Anheuser-Busch Brewing Association, would they? A. Neither of them would be worth very much without the other. None of them would be worth anything without business, and none of them have very much business at the present time.

Q. I thought you said you did not take into consideration at all the use of the railroad A. To my mind you are not dealing with the question of value fairly. I have testified time and again, Governor. that my estimate of value was based upon the cost of reproduction of this physical thing which exists. That value that I have found there in that respect would exist next year if there was not a wheel turned on that property within the next twelve months.

Q. But in making that value did you consider that the railway connected with the Anheuser-Busch Brewery, and that the Brewery connected with the Manufacturers' Railway? A. I have testified before, and I testify again, no, sir, most decidedly not. It was the question of building a railroad of the kind—

Page 125 Q. What would the Manufacturers' Railway be worth if it did not connect with the Brewery? It would not be worth very much? A. It would be worth whatever it cost to build it as it stands today, from the standpoint that I assumed in making its valuation,

which is the standpoint which is being used generally in making valuations of the railways, both by the railways themselves and by the Interstate Commerce Commission.

Q. I just want to get it clear in the record. You first said you did not take into consideration the use— A. I say so still.

Q. —to which the Manufacturers' Railway is to be put: Now I ask you if the railway would be worth anything if it did not connect with the Brewery? Manifestly it would be worth very little, is not that true? A. As a revenue producer, yes, sir. As something which represents certain expenditures of money (which was the only way in which I considered it) it would be worth whatever it would cost to reproduce it today.

Q. You looked at it merely from a standpoint of a work of art? A. Not at all.

Q. And not for utilitarian purposes? A. Not at all. I don't think it is especially a work of art.

Q. The Anheuser-Busch Brewing Association furnishes a large part of the business of the Manufacturers' Railway, does it not? A. According to the record, yes.

Page 126 Q. In your Exhibit No. 2 you valued this lease from the Anheuser-Busch Brewing Association at $767,000.00? A. I showed that valuation. That was made by Messrs. Pitzman and Hildenbrandt.

Q. Would you consider that lease of any value to the Anheuser-Busch Brewing Association? A. I considered that that lease has a commercial value, as all leases have, dependent upon the value of the property and the term for which the lease runs, just as real estate has a certain value, and in making the value of the road as of the present day it seemed necessary and proper to consider the value—

Q. You counted it as having a value of $767,000.00 to the Manufacturers' Railway. Ought not the value to be on the other side of the ledger? The value is to the Anheuser-Busch Brewing Association. It gets revenue from it, does it not? It gets $24,000.00 a year, does it not, through that lease? It makes its own hauling a source of income instead of paying out for it? A. The Brewing Association gets $24,000 a year for the use of the property under the lease. The Railway leases that property for that price, and the valuators of the Railway and the lease considered that the lease is worth to the Railway the sum expressed in the estimate.

Page 127 Q. Here is the Brewing Association obtaining a revenue by means of this lease of $24,000 from its own hauling, that before had been a source of expense. Would you not consider that lease had some value to the Brewing Association? A. From the standpoint of affording income, yes, the Brewery is no different from any other enterprise, Governor; it commenced in a small way like any other enterprise, the growth and money of which has made the greatness of this country, industrially. It commenced when people transported what they had to transport on their backs, and finally were able to employ teams, finally they became rich (and wicked) because they have a railroad, and—

Q. They become rich and wicked, do they? A. I suppose so if they have anything to do with a railroad.

Q. By means of leasing to the trunk lines and obtaining a revenue for what they had been paying out money before: Is that the way they got rich and wicked? A. No, sir, I spoke of "wicked" in a jocular sense; you know how I did it.

Q. A good deal of your evidence is jocular, is it not?

A. It is not intended to be so, but I am very glad if I have entertained you.

Page 128 I have heard that an ordinance of the City of St. Louis limited the charge of the Manufacturers' Railway to $2.00 a car for local switching; it is contained in the record. I did not consider that ordinance in making up my valuation. I looked it up because in the days I spoke of a while ago, I read the record, for the sake of doing something and because I think it is usually well if you are going to do a thing in connection with a certain property to read any printed record that there may be concerning it. The printed record had nothing to do with the physical valuation of the property. I am sorry if I offended by reading it, but I did. I felt the interest of a citizen and of a railroad man and of an expert in knowing what course the case had run.

Page 129 Q. Did you read the record as an expert or as a citizen? A. Both, I hope.

Q. You did not read it for the purpose of making your valuation, but just a general curiosity to— A. I think that is an unfair statement; I don't know that I can define the exact reason that led me to read it, but I read it.

I testified yesterday that I had read the findings of fact of the Commission, and I have made certain findings of fact in this record which you may term "Kendrick's findings of fact." I do not know that my findings differ from the findings of the Commission; I have not compared them, except with respect to the number of miles of tracks owned by the Brewery, I do not know that my valuation touches upon the facts that are alleged or stated by the Commission. I do not remember that the Commission decided anything in respect

Page 130 to the value of this property. I have never before val-

ued a railroad precisely like the Manufacturers' Railway; I have valued tracks in and about facilities, used for track purposes. I am unable now to recall which plants I have valued the tracks of. I don't know that I can name one. I have never before valued a railway such as the Manufacturers' Railway. This is a regular transportation railroad. I have made valuations, for instance, of the Illinois Terminal Railway Company that extends from Alton south to East St. Louis, about fifteen or twenty miles. This is my first experience in attempting to value a line of the peculiar characteristics of the Manufacturers' Railway, connecting, as it does, with the Anheuser-Busch Brewing Association
Page 131 facility tracks. I was employed by Mr. Kirby, and it is my understanding that I represented the Manufacturers' Railway Company.

Q. You did not know that Mr. Kirby represents the Brewery? A. Well, I will not be so sure about whom I represent. I made a valuation of the Manufacturers' Railway.

Q. You are not certain whether you represent the Manufacturers' Railway or the Brewing Association? A. I am not trying to represent any one. I am trying to appear as the valuator of this Railroad.

Re-direct examination, by Mr. Andrews: The lease to which I have referred, for which the Railway Company pays the Brewing Association $24,000 a year, covers the land on which the tracks are laid, as well as those tracks marked in red belonging to the Anheuser-Busch Brewing Association. In my valuation I had the real estate expert's estimate within the leased boundary, merely the land covered by the tracks, that is by all tracks, those marked in red and yellow alike.

Re-cross-examination, by Gov. Folk: Q. These

tracks and the land referred to are within the walls of the Anheuser-Busch Brewery? A. Not all of them.

Q. In the enclosures? A. A very, very small part of them are within the walls of the Brewery.

Q. Within the enclosures of the Brewery? A. They are within the block boundaries of the property owned by the Brewing Association; in two cases they are partly within the enclosures.

Q. The tracks leased from the Brewery are not used exclusively by the Brewery? A. I have not stated in my testimony that they are. Only those portions of the tracks leased from the Brewery, which are within the Brewery buildings and inaccessible to the public, are used wholly for the purposes of the Brewing Association; I will qualify that statement by saying that with respect to what is known as the Ninth Street Yard, it is not claimed that the facilities are adapted to other uses than those of the Brewery.

In "Summary B-1" I said the "value of tracks and right-of-way used exclusively by Anheuser-Busch Brewing Association," that is the Ninth Street Yard, Page 133 the one I just referred to. That Yard may occasionally be used for others than the Brewery, it can be, but I doubt if it is. So far as I know, it is not.

Re-cross-examination, by Mr. Esterline: I have not received any compensation on account or otherwise. I hope to. I don't know from whom, I presume from Mr. Moore (the President of the Manufacturers' Railway); I shall look to him. I think, perhaps, he will admit that he is going to pay me; I hope he will admit he is going to pay me something. I hope to get it from him although he was not the one that employed me, that was Mr. Kirby. If Mr. Moore does not pay me I shall certainly look to Mr. Kirby.

Re-cross, by Gov. Folk: Q. You think you have rendered value, do you? A. I am not altogether certain; I hope so.

ge 134 Q. To the Brewing Association? A. Not to the Brewing Association; I mean in connection with the valuing of the Railroad.

Q. In connection with the Brewing Association and the Manufacturers' Railway? A. No, sir. That is your interpolation. I say in regard to the valuing of the Railroad.

Q. Would you say its value to the Railway or to the Anheuser-Busch Brewing Association? A. In determining the value of the Railroad, to whomsoever it may concern, paid for by some one, I hope.

Re-direct examination, by Mr. Andrews: I did know that Mr. Kirby represented the owners of both the Anheuser-Busch Brewing Association and the Manufacturers' Railway. My business last year was wholly with the Railway. He represented the Railway at that time, so I presume that will be the case. I also knew that Mr. Kirby represented the owners of the St. Louis & O'Fallon Railway. He employed me to value it.

ge 135 **JULIUS PITZMAN, a witness called by petitioner, Manufacturers' Railway Company, being duly produced, sworn and examined, testified:**

Direct examination, by Mr. Andrews: My name is Julius Pitzman; residence, St. Louis; I have lived here since 1854; am city surveyor of St. Louis and civil engineer. I have handled real estate in this city for many years, have acted as commissioner of property, and have in my life divided estates of property amounting to $50,000,000.00. I divided nearly every estate in St. Louis, the Lucas, O'Fallon, Biddle, and Mullan-

phy; I have done considerable work as a surveyor in developing property. I have valued real estate belonging to different railroad companies of this city.
Page 136 I was the umpire selected to fix a valuation for the Eads Bridge when that was being built; I was commissioner in the condemnation proceedings of the Wabash Railroad, and of the Burlington Railroad, through St. Louis. I have acted as commissioner in smaller condemnation proceedings of the Missouri Pacific and of the Terminal Railroad Association. I have been employed by different railroad companies to survey and lay out their roads in this city. I have located several railroads through the town.

I am familiar with the Manufacturers' Railway, its location and structure; I valued it originally, the first part of it. I surveyed and superintended the building of it with Mr. Taussig; that was twenty-five or thirty years ago; I cannot fix the date.

I own property in St. Louis. I own a tract of land
Page 137 on the corner of Sidney Street between the levee and Main Street, right between the St. Louis, Iron Mountain Railroad and Manufacturers' Railway. I am familiar with the values of property in the vicinity and close proximity to the Manufacturers' Railway. I have owned a great deal of property myself in that locality.

I was requested or employed by the Manufacturers' Railway Company to fix the market value of certain land occupied by that Road. I think the first valuation was made probably one and one-half or two months ago; Mr. Hildenbrandt worked with me. We fixed a market price for that land; we examined each piece of property and finally came to some mutual understanding of what we considered it was worth.

We placed a value on the property between Main and Third, Chouteau Avenue and Miller, at $1.50 a

Page 138 square foot. The property east and west of Second Street between Miller and Lynch Streets, at $1.00 per square foot. The property east of Second between Lynch and Dorcas Streets, $1.50 per square foot. The property between Broadway and Second Streets, and Dorcas and Arsenal, at $1.75 per square foot. The property between Second Street and the St. Louis Transfer Railway, and between Dorcas and Arsenal Streets, at $1.50 a square foot. The property between the Transfer Railway and the railroad yard of the Manufacturers' Railway, $1.00 per square foot. The property between Broadway and Ninth, and between Lynch and Arsenal, at $2.00 a square foot. The property between Ninth and Eleventh Streets, and Lynch and Arsenal, $1.75 per square foot. The property between Eleventh and Thirteenth Streets, and Lynch and Arsenal, at $1.50 per square foot. The right-of-way through the Arsenal grounds between Arsenal and Utah, at $1.00 per square foot. The land south of Utah Street, at 75 cents a square foot.

We based our estimate of the value of the land on sales, the income bearing capacity of the property, and the purpose for which it could be used.

Page 139 Q. Do you know of any sales that have taken place in that neighborhood recently? A. Well, if you call it an exchange, I was selected by the St. Louis, Iron Mountain & Southern Railway and by the Manufacturers' Railway to make an exchange of property between the two companies, and the prices which we agreed upon for the exchange were on an equal footing with these prices which I have just mentioned, and both parties agreed to them.

I may say this, that my land on Sidney Street is leased and bears an income on about those valuations. For 2/3 of a block of ground we get $2,000.00 a year,

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but the lease was made ten years ago, before the Manufacturers' Railway was located in front of the property. Then, furthermore, the Lessor agreed to put up certain improvements unoccupied at the time, and while we are receiving only $2,000 a year, I consider it equal to an income of $3,000 on our land, which would be five per cent of $1.00 a square foot.

We also valued a small triangular piece of land near Rutger Street, leased from the Board of Education of the city. We placed a value on that leasehold of $1,500.00 as the present value of the lease.

We valued the lease from the Anheuser-Busch Brew-
Page 140 ing Association to the Manufacturers' Railway Company, covering the property included in pink on the map, between Lynch on the north, Utah on the south, Thirteenth Street on the west and First Street on the east, the rental being $24,000 a year and the lease having 17 years to run from January 1, 1915. We valued that property leased by the Manufacturers' Railway Company at a total value of $1,377,853.00. Mr. Kendrick furnished us the number of square feet included in that lease; I multiplied the number of feet furnished
Page 141 by Mr. Kendrick with the valuation heretofore stated by me, and according to that valuation we found the total value to be $1,377,853.00 as the market value of the land covered by the lease. The rental value based on an income of five per cent is $68,892.65. As I was informed, the amount to be paid annually under the lease is $24,000. The lessor also pays the taxes, estimated at about $6,000, reducing the net income to about $18,000.

We found the present market value of the amount of land, as furnished by Mr. Kendrick, who represented that that was the number of feet included within the lease, on which the Railroad is constructed; and we

applied to that quantity of land the market value that I have given, thereby finding the value of the land to be $1,377,853.00. Then I calculated the income at the
Page 142 rate of five per cent and found the rental value of that land to be $68,892.65. As the lessee had to pay $24,000.00, but not the taxes, that reduced the net income to the lessor to $18,000.00. I deducted that sum from the $68,892.65, leaving $50,893.00. As that is the value of the lease for the unexpired term of 17 years—taking the cash value of an annuity for that length of time, it would make the value of the lease $573,767.00.

The number of square feet which Mr. Kendrick furnished on which we made the computation was: The First Street Yard contains 259,584 square feet valued at $1.50, amounting to $389,376.00. The Shipping Yard contains 203,984 square feet valued at $1.75, amounting to $356,972.00. The St. Louis Refrigerator Car Yard, 16,896 square feet valued at $1.75, amounts to $29,568.00. The Broadway Yard, 56,160 square feet at $1.75, amounts to $98,280.00. The Seventh Street
Page 143 Yard contains 19,460 square feet at $2.00 a square foot, amounting to $38,920.00. The High Line contains 1,380 square feet at $2.00 per square foot, amounting to $2,760.00. The Ninth Street Yard contains 29,424 square feet at $1.75 per square foot, amounting to $51,492.00. Foot of Dorcas Street, 10,220 square feet at $1.50, amounting to $15,330.00. Lyon Street Yard, 28,144 square feet at $1.75, amounting to $49,252.00. Eleventh Street Yard, 96,320 square feet at $1.75 per square foot, amounting to $168,560.00. The Eleventh Street Yard, 29,520 feet at $1.50 per square foot, amounting to $44,280.00. The Thirteenth Street Yard contains 64,080 square feet at $1.50, amounting to $96,120.00. Dorcas Street Main Line, containing 1,056 square feet at $2.00 per square foot, amounts to $2,-

112.00. Dorcas and Second Street, 23,221 square feet at $1.50, $34,831.50.

Page 144 The property in the River Yard leased from the City of St. Louis is made up of two parcels of land, as follows: 133,921 square feet at $1.00, $133,921.00; 161,592 square feet at $1.50, $242,388.00; total, 295,513 square feet, valued at $376,309.00.

As to the unexpired term, from January 1, 1915, to October 7, 1934, of the lease under which the railway pays $4,000 a year to the City, and the present market value of the land covered by that lease, we put a present value on that lease; basing it on a five per cent income, the rental value of the property is $18,815.45 annually. The present value of an annual income of **$18,815.45**, reduced by $4,000.00, the ground rent payable to the City, for 19 years 9 months and 7 days, from January 1, 1915, to October 7, 1934, allowing five per cent interest on the deferred payment, in round figures is $183,335.00.

Page 145 **Cross-Examination by Gov. Folk**: The Manufacturers' Railway leases this River Yard from the City and pays only $4,000.00 a year.

Q. You think the Manufacturers' Railway should pay the City of St. Louis $18,000.00 a year rent? A. At the time they leased the property it was not railroad property and had no access. It has become valuable by the very fact that the Manufacturers' Railway built an overhead railroad crossing across the Iron Mountain Railroad and made it valuable by that improvement.

I say that at present a fair rental for that property would be $18,000.00 a year and the City of St. Louis receives $14,000.00 a year less from the Manufacturers' Railway for that property than it should receive if the lease was made today, with present conditions and with

the existing railroad. The Manufacturers' Railway is not that much ahead of the City of St. Louis. They produced the value that made it valuable. The property really had no value at all in the condition it was when the lease was granted, at which time it was worth only $4,000.00 to a person who had it within his power to utilize the property. The property was in reality made to a certain extent by the river improvement made above and below the property. The property has been secured against washing.

At the time this lease was made $4,000.00 was the reasonable value in the condition it was at that time.

Q. Then if it was a reasonable value, the lease at that time had no value at all to the Manufacturers' Railway, did it? According to the way you estimate a value of a lease you deduct what is paid from what you think should be paid and you call that for the life of the lease the value of the lease? A. Yes, sir; my valuation is based on the realty as the condition existed in 1915, not in 1904. There are big differences. For instance, take the block of ground I own, which is worth $1.00 a square foot or $1.50 a front foot. If that was laid out in lots, 25-foot lots, I would not take it at one-third its value, because the block of ground as it exists with railroad communication on both sides, with two competing railroads, has three or four times the value it would have as a building lot for a single family. In estimating the value of that lease, I considered the fact
Page 147 that the railroad is already there.

Q. Did you take into consideration other improvements that may be made in the future? A. It is not only that the railroad is there, but the big American Car and Foundry Factory which purchased a block of ground for one-half a million dollars and erected buildings on it costing probably $1,000,000.00 more, that

greatly enhances the value. I don't recall when the American Car & Foundry Company purchased, having no way of fixing the year, but I should think six or seven years ago. I made the surveys at the time. The American Car & Foundry Company has connections with the Manufacturers' Railway. As to whether they make shipments over it, I don't know anything about the operations of the Manufacturers' Railroad, but they have communications. I know the switch connections exist because I see the cars of the American Car & Foundry Company often, in the switch yard belonging to the Manufacturers' Railway.

I have property myself down on the line of the Man-
Page 148 ufacturers' Railway, between it and the Iron Mountain. On Second Street, along the line of the Railroad, the property is mostly residence property, with factories interspersed between. I would not say all are dilapidated buildings, because it is not as dilapidated as Olive Street between Twelfth and Grand Avenue.

Q. Do you find property very readily salable in that section? A. The manufacturing property is not what I would always call readily salable property. The manufacturers differ, and spread at certain periods of time, and then they are willing when that time comes, to pay the value of the property, or a pretty fair big value for it. My valuation is not based on expectation for the future rather than present conditions. They are real values, because I do not think you could buy a single block of ground there, on which you would not have to pay that sum; that is in order to be able to utilize a block you would have to demolish the buildings which are worthless, for the value which I place on this property.

Page 149 Q. What is the kind of value you place on the property? A. A value based upon the fact that the man

who buys it makes the best use of it, and I estimate, that for manufacturing or railroad purposes this property is worth the amount I have indicated, and I know that the railroads have paid—

Q. You see in your mind a dream of factories all over this property, and you estimate the value in accordance with that dream? A. No, sir. I owned a block of ground between Fourteenth and Fifteenth on the Pacific Railroad, and I know what I got for that; and I owned a block of ground between Main Street and the Levee, and—I think it was between Trudeau and La-Salle Street. I sold that to the Iron Mountain Railroad, and my valuation was based upon fixed periods, in valuing property of that kind.

Q. Would you like to sell your property down there at the valuation you placed on it? A. No, I would rather keep it.

Q. You don't think there is any danger of anybody taking you up? A. I had an offer to sell it three years
age 150 ago, at about those figures. It was not considerably less than those figures; we asked them $70,000.00, but we finally agreed to sell it to them for $60,000.00, which is $1.00 a square foot, and they did not take it because there was a lease on it; they had to buy out the lease in addition.

I spoke of the property leased from the Anheuser-Busch Brewing Association for which the Railway pays $24,000.00 a year. The number of tracks on that property is different in different localities.

Q. Those tracks are within the enclosure of the Brewery? A. Well, it is very hard for—the whole place is open there.

Q. They are used for the Brewery shipments exclusively? A. No, sir.

Q. What places are used exclusively for the Brewery shipments?

Mr. Andrews: We did not put him on to show the
Page 151 use of this property, but simply to show the valuation of the real estate covered by this road.

Gov. Folk: But he is giving his estimate of the value of the lease.

Mr. Andrews: Based on the market value of the land.

Gov. Folk: I am testing his knowledge in that respect.

The Witness: To explain the matter, I own one-third interest in a tract of land between Park and Chouteau, extending from the Missouri Pacific to the Iron Mountain, 2,500 feet in length by about 400 in width. We run switches in all through the tract belonging to the Pacific Railroad Company and to the Frisco Railroad Company. They are inside of our yard, but it is for their business. They have the business; they operate them; we don't. And so with these switches here; while they may be as you say, inside of the premises owned by the Anheuser-Busch Brewing Association, it is the only way they can handle it.

Q. Let us see what method you use in arriving at the value of the lease. Suppose the Anheuser-Busch Brewing Association should employ you to value this lease from their standpoint. How would you go about it? A. I would say that was the value of that lease.

Q. $767,000? A. Yes, sir.

Q. To the Anheuser-Busch Brewing Association? Is it worth that much to them? Is the lease worth $767,000 to the Anheuser-Busch Brewing Association? A.
Page 152 76—I did not think that was the sum—

Mr. Kirby (to Gov. Folk): He does not understand your question.

Gov. Folk: Q. Suppose you were employed by the Anheuser-Busch Brewing Association as an expert to value this lease whereby the Brewing Association receives $24,000.00 a year for these tracks upon which it makes shipments, how would you value the lease. A. Precisely as I have stated it.

Mr. Kirby (to Gov. Folk): You mean the lessor's interest or the lessee's?

Gov. Folk: What would be the value of the lease to the Anheuser-Busch Brewing Association? A. It has never made any difference to me for whom I make the valuation; I would have stated that the value of that piece of property was as much as I have stated.

Q. Would you say that the value of that lease is $767,000, or whatever the amount is that you have there, to the Anheuser-Busch Brewing Association? A. Yes, sir.

Q. How can it be worth $767,000, as an asset to the Brewery, and at the same time worth $767,000 as an asset to the Manufacturers' Railway?

Mr. Kirby: Are you talking about the leasehold, Governor?

Page 153 **Mr. Andrews** (to the witness): He is asking you the value of this lease to the lessor.

The Witness: Oh, to the lessor?

Mr. Andrews: To the Anheuser-Busch Brewing Association? A. I did not understand.

Gov. Folk: Q. Suppose you were employed by the Anheuser-Busch Brewing Association to value this

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lease under which it receives $24,000.00 a year; what would you say to the Brewery this lease is worth to the Brewery? A. I would want to see what contract I could make with the Railroad Company in order to secure the traffic.

Q. The kind of contract did not enter into your calculation in estimating the value of the lease of the railroad? A. I only made a valuation of the real estate.

Q. Suppose this situation: That originally the Brewery hauled its beer by teams and wagons to the trunk lines at great expense; then later the Brewery built these facility tracks inside its walls; the Manufacturers' Railway came up to the walls, and the Brewery thereupon leased its tracks within the walls to the Manufacturers' Railway, and what before had been an expense in hauling its beer to the trunk lines became a source of revenue to the extent of $24,000 a year under the lease. What would you say would be the value of
Page 154 that lease to the Brewery? A. That would be speculative simply.

Q. Well, speculate a little. A. I would not do that; I am not built upon that line.

Q. Did you not speculate in attempting to value the lease for the Manufacturers' Railway? A. No, because the valuation I have made is irrespective of the Anheuser-Busch Brewing Association business. Mr. Busch might possibly have paid a bonus to get the railway to do it. That is a different question, however.

Q. Is not all value more or less speculative, it depends upon the contingencies of the future? A. Yes, but it is for the expert to determine the extent. I am an expert, but my "expert" does not lay in the line of valuing what it is worth to the Brewery.

Q. You are an expert, you ought to be an expert both ways as well as one way. Let us expert a little on the

problem and do a little expert figuring as to the value of this lease to the Brewery? A. It depends upon the amount of the business they would do a—

Q. Would you not say it would be a pretty valuable lease to the Brewery if it gets rid of the expense of hauling its traffic to the trunk lines, and makes the source of the hauling of the traffic a source of income instead of an expense?

Page 155 **Mr. Andrews (to the witness):** The Brewery has no lease on this ground; the Railway has the lease on it; the Brewery owns the ground. Keep that in your mind.

Gov. Folk: Q. Keep that in your mind, the Brewery owns it. Originally the Brewery had to use horses and wagons and carts and drays to haul its stuff to the trunk line. By building these rails or tracks within its walls and by leasing these tracks to this Manufacturers' Railway and to a point without the walls, it gets income from its hauling of about $24,000 a year, and what before had been a source of expense became a source of income to the extent of $24,000 a year. What would you say would be the value of such a lease to the Anheuser-Busch Brewing Association, speaking now as an expert? A. I cannot go into that question because I might just as well calculate how much the Brewing property is benefited by the Iron Mountain Railroad running through different States. I would not know where it would terminate, to calculate the value of the lease, the benefit of that lease to them. You would have to take into consideration the whole main line of the Iron Mountain Railroad and all connecting railroads.

Q. You as an expert are estimating an obligation of the Manufacturers' Railway whereby it binds itself to

Page 156 pay $24,000 a year, as worth $767,000 to the Manufac-

turers' Railway? A. Yes, in my opinion, if I owned the property, for instance, and the Railroad wanted to rent these railway tracks, that is what I think they should pay me, irrespective of what purpose I was going to use the property for, or actually did use it for. I am assuming that I am the Anheuser-Busch Brewing Association, and that I am the owner of the property irrespective of the business I am in.

Q. Let us suppose you are the Anheuser-Busch Brewing Association, if we can have some violent assumptions for a moment, and suppose that you owned this property; suppose that you are shipping thousands of kegs of beer a day, and using horses and wagons to haul it, at a great expense; then suppose you build your tracks within these walls there on your ground, lease those tracks to the Manufacturers' Railway, and get $24,000 a year for those tracks, thereby making your hauling bring in an income to you instead of being an expense. Would you think that would be a pretty good thing? A. Yes, that is a pretty good thing if you put it that way.

Q. It would take a pretty wise scheme to devise a plan like that, that will make what would ordinarily be
Page 157 an expense, an income instead? A. I think the City of St. Louis in a like way would have to pay—the growth and development of St. Louis depends upon the railroads being built through the State of Missouri and other States. Therefore, whenever a road is built into St. Louis, they ought to give them the land and pay them for coming here. Precisely the same thing—

Q. Do you know of any other industrial plant in all the City of St. Louis, or in any city of the United States, that gets an income from its hauling and makes its hauling a source of income instead of an expense? A. Well, as long as there are tracks within

this ground owned and controlled absolutely by the Brewery, he can throw his freight in any direction. After he turns it over to the Manufacturers' Railway Company he can only use that railway for his shipping, because he cripples his whole factory site, by giving that exclusive right.

Q. Do you mean to say that the Brewery denied itself the right to route its freight over any road it pleased after it reached the trunk lines? A. They would have to build other connections, which it is comparatively impracticable to do.

Q. Suppose they desire to ship beer to New York. The Brewery can still select the trunk line carrier to haul that beer? A. They can select the trunk line carrier, but it has to give the switching, etc., to this company.

Page 158 Q. It has to give the work which was done before by teams and wagons, at an expense to the Brewery, it has to give that work to the Manufacturers Railway, and instead of paying the Manufacturers Railway to do the work, the Manufacturers Railway pays the Brewery for the privilege of doing it. Is not that the situation? A. No, I don't look at it in that way, because if that view is correct, then the Brewing Association would have to pay, I presume, according to your notion, what it makes by the cars and locomotives, and operate them, because they gain that much money by it.

Q. Who keeps up those tracks inside of these walls? A. The railway, or whoever is the owner of the tracks.

Q. The Manufacturers Railway does. So the Manufacturers' Railway not only pays the Brewery for the privilege of hauling its traffic to the trunk line, but it keeps up these industrial tracks within the walls as well, is not that so? A. I presume so, if they own

the ground, or if they own the lease, they certainly have to keep up their tracks.

Q. Can you think of a single other industrial plant that makes its plant facility tracks a source of income instead of an expense? I would like to know of one other. A. Take for instance, the American Car & Foundry Company; they have no land outside of their
Page 159 factory, but they pay so much for every car they put on the track; that is an income to the Railroad Company. I don't know just the amount they pay, but if they occupy a half dozen tracks of the Busch Yard, they pay so much per car; why should not the Manufacturers' Company, by using this road, pay the Anheuser-Busch Brewing Association for furnishing the ground on which it can be done?

The Car and Foundry Company depend upon the Levee tracks and upon the Anheuser-Busch Yards in order to do their business.

Q. The American Car & Foundry Company is out of pocket for its shipments; its hauling is not a source of income, but a source of expense. Is not that true? Ordinarily that would be so? A. If they wanted to save that, then they would have to purchase the ground on which to build tracks.

Q. They have ground inside of the walls of the American Car & Foundry Company. Assuming now that the American Car & Foundry Company, as is ordinarily the case, is paying out money for getting its freight to the trunk line, and suppose it has some track inside of its walls, and the Iron Mountain Road comes along and says: "We will pay you $24,000 a year for those tracks." The American Car & Foundry Company then gets an income from its hauling instead of it being an expense. You see that, don't you? A. Yes, but if they—

Page 160 Q. You would say that would be a pretty good lease for the American Car & Foundry Company? A. Well, they furnish the business.

Q. And what before was a matter of expense in the way of hauling becomes an income under this lease? A. They have the capital invested.

Q. The lease would be a valuable thing for the American Car & Foundry Company in the case mentioned? A. If they could sell the land—you mean to the railroad?

Q. No, they would simply lease the tracks inside their walls. A. You lawyers look at that question different from what we do.

Q. Suppose the Iron Mountain says to the American Car & Foundry Company: "We will lease these tracks and we will pay you $24,000 a year for your track." Before that it had cost the American Car & Foundry Company we will assume $24,000 a year to get its traffic out, and by means of this lease, instead of being out of pocket $24,000, it is in pocket $24,000. In other
Page 161 words, under that arrangement should not the Iron Mountain Railroad be paying the American Car & Foundry Company $24,000 a year for the privilege of hauling the traffic of the American Car & Foundry Company? A. Yes, that is true, but the owner of the property surrenders the use of his property for a certain purpose, and they therefore take it entirely. Who can tell whether there will be a road in ten years, whether the property will be used for such a purpose? I did not put the price value on it to consider it a brewery—I might agree with you and say this contract from the Brewery paying the hauling may be a benefit to them—

Q. Suppose that the Anheuser-Busch Brewery should vanish into thin air: what would the Manufacturers'

Railway be worth? What would this lease be worth? A. I say that is speculative entirely; we don't know what would become of it.

Q. But you have speculated on the value of this lease for years and years in the future? A. Based upon the present conditions; you have to take a basis; you have to take present conditions into consideration; you cannot take the future conditions.

Q. As I understand you, you said that such a lease in the instance of the American Car & Foundry Company would be of value to the American Car & Foundry Company as it would naturally be to anyone, to turn a
Page 162 source of expense into a source of income. Any such contract is of value to anyone? A. If it was for a lease terminated at the pleasure of the owner, it might be a benefit.

Q. If this lease is of value to the Anheuser-Busch Brewing Association whereby it makes an income and saves an expense, how can it be of the value of $767,000.00 to the Manufacturers' Railway? How can you make an asset of the Manufacturers' Railway? Can the lease be worth as much to one as to the other? If you were valuing the Anheuser-Busch Brewery would you place this lease in the liability list or in the asset list of the Brewery? A. I would say that in order to operate the railroad to do the business, it is necessary to get the switches, and it is not more than fair that they should be the value of that property for general purposes. The other is a profit which inures to the manufacturer, just as well to the man who manufactures clothing, etc. Suppose I am in the clothing business or manufacturing business of any kind, and I buy a piece of property, and say I will want the railroad to come in and make a connection with my plant. In order to get the business they will condemn the

property right up to my factory and give me the privilege of shipping my freight on their switch.

Q. Your idea is that the railroad has a right to give what might be termed a "rebate" to the shipper, in
Page 163 order to get the shipments from the shipper? A. No, I mean to say that the Railroad has to do whatever everybody else does. It has to have a plant by which it can control the business. It has to have the right-of-way in order to get the business in order to make an income.

Q. But under this lease it pays the Brewing Association $24,000 a year; the Brewing Association gets $24,000 a year for its hauling, whereas before we assume it cost the Brewing Association $24,000 a year? A. They have the exclusive use of the right-of-way they obtained. Nobody else can run over those tracks. I don't see why you should charge it against the owner of the property. That is entirely irrespective and has no connection with it whatever in my opinion. The owner of the property has no connection with it because today perhaps the Anheuser-Busch Brewing Association shipped two-thirds of the freight over this road; tomorrow they might ship only one-half; in five years from now they may use only ten per cent of the ground. How are you going to estimate that? I think you are on a wrong basis entirely.

Q. Do you know, Mr. Pitzman, that a majority of the stock of the Manufacturers' Railway is owned by the holders of a majority of the stock of the Anheuser-Busch Brewing Association? A. I don't know who owns the stock; I have not the slightest idea. I am not a speculator.

Page 164 Q. From your knowledge of the situation there would you say the Manufacturers' Railway would be of any practical value without its connection with the

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Anheuser-Busch Brewery? A. No, I don't think it would be of great value without it; I take that back. I think it would be of great value to the Iron Mountain Railroad, even if it had no connection with the Brewery. I do not know that about three-fourths of the shipments of the Anheuser-Busch Brewing Association are made over the Manufacturers' Railway. The tracks within the walls of the Brewery, if separated from the trunk lines by two miles without any tracks connecting them would be of no value at all.

Q. And so in valuing these tracks and this real estate within the walls, you take into consideration the fact that the Manufacturers' Railway connected up with these tracks within the walls? A. Yes, sir.

Q. And standing alone, without the Manufacturers'
Page 165 Railway tracks they would be of no practical value? A. No.

Q. So the Brewery tracks without the Manufacturers' Railway would be of little value, and the Manufacturers' Railway without the Brewery tracks would not be of any great value? A. Well, unless they make other connections with trunk roads or the Iron Mountain, the road would not be worth anything. I have lived in St. Louis over sixty years; I am familiar with conditions in the neighborhood of the Brewery.

Q. Can you tell us as an expert whether you think this arrangement made by the Anheuser-Busch Brewing Association, under which it gets $24,000 a year for its tracks over which it makes shipments itself, is a good thing or a bad thing for the Brewery? A. It is a good thing. Every railroad connection is a good thing.

Q. If this lease is such a good thing for the Brewery how can it be worth $767,000 as an asset to the other
Page 166 side? A. Well, supposing here I have that tract of

land between Chouteau and Park Avenue and the Iron Mountain Railroad or the Pacific Railroad says: "We want a strip of land from you," and they condemn sixty feet. They say, "We are going to produce such and such business on it that will be of benefit to you"; the next year they come along and take another sixty feet; and so it may go on from time to time condemning all my land and taking it for nothing because I benefit always by the business they bring there, but I lose the land, don't I?

I estimated the value of this lease on a basis of $68,000 a year, which I arrived at, on the valuation of the property. I did not go into any speculation at all. I simply considered the true market value of that property, and allowed a five per cent income on it. That is the sum that produces the annual revenue.

Q. Suppose, instead of paying $24,000 a year, the Manufacturers Railway Company paid $60,000 a year to the Anheuser-Busch Brewing Association for the privilege of hauling traffic of the Brewery. You would then estimate the value of that lease at the difference between $60,000 and $68,000? A. Yes, sir, for the unexpired term of the lease.

Page 167 Q. And so, on your basis of calculation, by the yardstick you used to estimate the value of the lease, you would say that a lease whereby the Manufacturers Railway Company pays to the Brewing Association $60,000 a year for the privilege of hauling the traffic of the Anheuser-Busch Brewing Association, would be worth $8,000 a year, not to the Brewery, but to the Manufacturers' Railway? A. It would be only worth that much; yes, sir.

Q. And if the Manufacturers Railway were to pay the Brewing Association $65,000 a year for the privilege of hauling the traffic of the Brewery, that lease

would be worth $3,000 a year to the Railway? A. Yes, sir.

Q. Would you not hate to be employed by the Manufacturers' Railway and be paid $3,000 a year on the value of such a lease whereby the Manufacturers' Railway agrees to pay the Brewing Association $65,000 a year for the privilege of hauling the traffic of the Brewery, turned over to you in lieu of the $3,000 a year the Manufacturers' Railway agreed to pay you? A. I
Page 168 really don't know how to answer that question.

Q. Do you think that the Manufacturers' Railway would be justified in paying the Anheuser-Busch Brewing Association $65,000 a year for the privilege of hauling the traffic of the Brewery? A. That depends entirely upon the amount of business they are doing whether they would be or not.

Q. It depends on the amount of business they do as to whether the lease is worth anything, and not on the value of the ground? I thought you said just now it depended on the value of the ground. A. Certainly; because, under your idea, if I was appointed Commissioner to condemn the right-of-way, as I was for the Burlington Road coming to St. Louis, I would have to go into the question of whether the railroad would pay anything at all for it, because it may not pay the Company to condemn the right-of-way in St. Louis. When the Santa Fe Railroad was built in Chicago it bankrupted the railroad to condemn the right-of-way through Chicago. Stock went down from $100 a share to practically nothing. But that did not affect the value of the right-of-way due to any condemnation proceeding or in purchasing it. Does the owner of the property have to go into the question of what the railroad is making out of the lease, or do they have to pay the value of the property—you can get it mixed up, if

you please, but that is the basis on which you have to value the piece of land.

Q. I understood you to say whether it would be a
ge 169 good thing for the Railway to pay $65,000 a year to the Brewing Association for the use of these tracks would depend upon the business received? A. Well, that is going into an individual case, yes.

Q. Then it doesn't depend upon the value of the ground and of the tracks? A. I think that your whole line of questioning only confuses things, it does not make it any plainer. It is a question that might come up between the owner of the railroad—

Q. But you have come here and have stated that a lease whereby the Manufacturers' Railway agrees to pay to the Anheuser-Busch Brewing Association $24,000 a year, in effect for the privilege of hauling the traffic of the Anheuser-Busch Brewery, is worth $767,000 to the Manufacturers' Railway? A. Oh, no, I beg your pardon. I did not make any such statement at all. I said that the value of the property was so and so much, and the income at 5 per cent is $24,000. I did not take into consideration what it was worth to the Railway at all.

Mr. Andrews: Q. The Railway might have made a bad bargain? A. Yes, made a bad bargain or a good bargain, because if they made a bad bargain it would not be worth anything.

Gov. Folk: Q. You are counting that lease as an asset to the Railway to the extent of $767,000? A. I value the real estate simply. I have nothing to do with the investment.

ge 170 I simply mean to say that if the railroad wanted to acquire a right-of-way that no Commission ever appointed (if they should choose to go to condemnation)

would ever appraise that land any less than we put it. If the Railway wanted to condemn this right-of-way, they cannot condemn it for one dollar less than I have stated. As far as I understand the law in the states, a railroad cannot take into consideration the benefit of the property received by establishing that railroad. You want to assess the benefit that inures to the owner of a given property, and deduct it from the cost of the property. That is your theory, is it not?

Q. I am trying to get at the logical result of the method that you use, and the result is that this lease would be an asset to the Manufacturers' Railway Company, even though the Manufacturers' Railway were to pay $67,000 a year to the Anheuser-Busch Brewing Association? A. I did not give any opinion about the value of the railroad, or whether it is an asset or a liability. I simply say that the railroad would have to
Page 171 pay that amount of money for that property if it choose to buy it, and at five per cent that is the rental value of it.

I arrived at the value of this lease by deducting the amount paid under it from $68,000, the rental value, and by multiplying the result by the number of years the lease has to run.

Q. Under that measure this lease would be an asset to the Manufacturers' Railway of this same property, even though the Manufacturers' Railway agreed by this lease to pay $67,000 a year to the Brewery? A. No, it would be a saving of that much cost. I did not attempt to say whether it is a benefit or an asset to the Company, because I have not studied that question. I don't know whether it is or not.

Re-direct examination, by Mr. Andrews: I did not value this lease by the amount or character of the busi-

172 ness, or whose traffic the railroad carried, that had nothing to do with it. I valued the lease, as I have stated, by ascertaining the market value of the land covered by the lease; but as to whether the Railway made a profit out of the lease, that did not enter into my calculation, nor whether it lost anything under the lease, nor whether the Brewing Association made any money out of it; that did not affect me one way or the other. That is precisely what I mean when I say I did not value it as an asset. I mean that if another railroad company came down there today, or a concern to build a railroad company, to reconstruct this road, in my estimation a fair value to pay for that land covered by the lease would be the amount stated by me.

Re-cross-examination, by Gov. Folk: In saying the lease is valued at $767,000, I mean it is worth that to
173 the concern that needs the land to do the business.

Re-cross-examination, by Mr. Esterline: I was requested by Mr. Daniel N. Kirby, of Nagel & Kirby, to make the valuation. I have owned the property to which I have referred as within the vicinity of the Manufacturers' Railway about twenty-five years, perhaps thirty-five. I have known the location in South St. Louis of the properties of the Manufacturers' Railway and of the Anheuser-Busch Brewing Association for a great many years as well as I know them now; I set the stakes for the first Brewery building that was put up there. That was in 1861. I have known the value of these properties since then.

174 I think I was a witness before the Interstate Commerce Commission in the case of the Manufacturers' Railway Company, et al., versus the St. Louis, Iron Mountain & Southern Railway, et al., No. 3151 I. C. C.

case; I don't recall the year, but I think it was about January, 1912, that I testified.

I presume I could have made the same investigations, or similar investigations, and have given the same testimony, or similar testimony, before the Interstate Commerce Commission that I have given here this afternoon before Examiner Babbitt, if the question had been presented to me in the same manner; if the same question was submitted.

I testified in that case at the request of the Manufacturers' Railway Company. At that time I was asked
Page 175 to give some values. I don't recall precisely what the testimony was. I testified to the value of the property. I don't think I was asked to testify as to the value of the leasehold or anything of that kind, and the reason I did not do so was because I was not asked to do it. I could have done it then just as well as I am doing it now if I had been asked to do so, and had been given time to prepare. My knowledge of conditions was the same then as now, and I could have made the same investigations and given substantially the same values as I have given here this afternoon, if I had been asked, except so far as changes may have taken place.

Q. I understand, but I mean the general investigations you have made, and general values? A. Yes, sir.

Q. As I understand it, the changes have not been
Page 176 very substantial in the short period of time, or could not be? A. Yes, sir, it has been extended a good deal since that time; the business along the Manufacturers' Railway has been extended a good deal since that time. With that exception, I could have given practically the same testimony, based on the same investigations, if I had been asked to do so.

Page 177 **ERNEST A. HILDENBRANDT**, a witness called by

the petitioner, Manufacturers' Railway Company, being produced, sworn and examined, testified:

Direct examination, by Mr. Andrews: My name is Ernest A. Hildenbrandt; residence, St. Louis; business, real estate.

I have been in the real estate business thirty years and have had experience in valuing real estate properties in the city. I have been actively engaged in the handling of real estate and the making of leases, making of loans, and buying and selling property in all sections of the city. I am familiar with the real estate values in South St. Louis in the vicinity and neighborhood of the Manufacturers' Railway. I have been op-
Page 178 erating down there for the last twelve or thirteen years, off and on.

I was requested by the Manufacturers' Railway to make a valuation, with Mr. Pitzman, of certain lands said to belong to the Railway Company? I did make such a valuation with him. I went down and looked at the property and investigated it thoroughly. I was in the room when Mr. Pitzman stated the particular lands that were valued and the prices per square foot. I concurred absolutely with him in these valuations, and in the descriptions of the land, such as lands between Main Street and Third Street, and Chouteau Avenue
Page 179 and Miller Street, that he recited. I concurred in those valuations at so much a square foot, as expressed by him.

I heard Mr. Pitzman testify as to his valuation in regard to a lease executed by the Anheuser-Busch Brewing Association to the Manufacturers' Railway, under which the Railway pays $24,000 a year. I concur absolutely in his statement as to the present value of the unexpired term of that lease, and as to the method of

arriving at that result, and as to the method used for ascertaining the value.

I also heard his testimony concerning another lease, made by the City of St. Louis to the Manufacturers' Railway Company, of property down on the river front, covered by railway tracks, under which the Railway pays $4,000 a year to the City. I concur in the value he places on that lease, as of the present time.

Page 180 I also concur in the valuation of $1,500, as the value of a leasehold on a small triangular piece of land leased from the Board of Education of the City of St. Louis.

The basis upon which we determined the values was the present market value of surrounding, and adjacent, and abutting property.

I know about one piece of property now occupied, owned or leased by the American Car & Foundry Company. It extends from Second Street eastwardly to
Page 181 the St. Louis, Iron Mountain tracks, and adjoins the glass works on the north. It is marked "43" on the map. As near as I can recollect, that property was purchased by the American Car & Foundry Company at about $500,000, I think about five years ago, but I am not positive as to the exact date. I had those figures and thought I had them in my pocket, but I find I left them on my desk. I can get them for you in the morning, if you want them.

Q. Do you know of any other property down there that was either bought or leased recently? A. Not
Page 182 very recently, no. About a year ago I made an attempt to locate a concern that wanted trackage facilities, and I hunted up and down the river front from Carondelet to Chouteau Avenue, and found that all the available pieces that would suit my parties could not be purchased at anything less than $2.00, and some of it as

high as $4.50 a square foot, and the prices were of such magnitude that the concern did not locate here. They went elsewhere—East, in Ohio. It was for an iron concern that wanted to open some blast furnaces out here. There haven't been any sales in that section in the last year or so that amounted to anything. There have been a few small transfers varying in price from $1.00 to $1.50 per square foot, but no particularly large block of ground. I mean small residence tracts.

Cross-Examination by Gov. Folk: In valuing the lease from the Anheuser-Busch Brewing Association we took into consideration the value of surrounding property, partly Brewery property.

Q. Did you estimate it to be worth $68,000 a year
Page 183 for brewery purposes? A. For ordinary commercial purposes, warehouse purposes, manufacturing locations, and things of that kind.

Q. You would say it was worth $68,000 a year for brewery purposes and for manufacturing purposes? A. Any character of manufacturing or warehouse property.

Q. Do you concur in the idea I understood Mr. Pitzman to express that even though the Manufacturers' Railway were to pay $65,000 a year to the Anheuser-Busch Brewing Association, that lease would be worth $3,000 a year to the Manufacturers' Railway? A. Not for the full time, no. I estimated the value based on the annuity tables used by the insurance companies; what an annuity would be worth, payable at so much per annum, for the full period of seventeen years, I think it is. That would not be 17 times $3,000. It would—

Q. What would it be; assuming that the Manufacturers' Railway paid the Anheuser-Busch Brewing As-

sociation $65,000 a year for the privilege of hauling the traffic of the Anheuser-Busch Brewing Association, what would such a lease be worth to the Manufacturers' Railway, according to your idea? A. I cannot answer without looking at my table, what that deduction would be, but it would not be so much per year; it would be less every year by a small fraction. I would have to look up that table.

Page 184 Q. Mr. Pitzman, as I understood him, testified that he arrived at the value of the lease by deducting the $24,000 per year paid under the lease, from the $68,000. A. That is right.

Q. And multiplied the result by the number of years the lease has to run? A. Mr. Pitzman figured out those things and showed me the tables and I compared the tables and figured it out later in my office, and got the same result. It is not $50,000 a year. If you multiply that $50,000 by 17 you get $865,000, instead of $573,767. There is quite a difference there, you see.

Q. Can you tell us what you would estimate the value of a lease to the Manufacturers' Railway whereby it would agree to pay to the Anheuser-Busch Brewing Association $65,000 a year for the privilege of hauling the traffic of the Anheuser-Busch Brewing Association in the manner described? A. Somewhere about $20,000 in round numbers.

Q. Instead of being a liability of the Manufacturers' Railway, such a contract would be an asset to that Railway to the extent you have named? A. In this way; I arrived at my figures in this manner: If the Manufacturers' Railway, or the Iron Mountain, or the

Page 185 Atchison, Topeka & Santa Fe, or any other railroad, wanted to come in today and secure a similar right-of-way which is now operated by the Manufacturers' Railway under this leasehold, they would have to pay

for that property, according to my figures, $1,377,853. They could, if agreeable to the owners of that property, execute a lease agreeing to pay $68,897 in lieu of a purchase. That would give the owners five per cent valuation upon that amount of money. A lessee having a lease that is today worth $68,000, and for which he today only pays $18,000, naturally there is a value of $50,000 per annum for him, and in that respect it undoubtedly is an asset to the owner of that lease.

Q. You estimated the value at $68,000 a year for brewery or manufacturing purposes; would you say that the value for transportation purposes would be identical with the value for brewery purposes? A. I am not valuing that land from the railroad standpoint, but from its ordinary real estate standpoint, as of a commercial value.

Q. So you don't pretend to say that that valuation for transportation purposes, or that the value for transportation, is the same as the value for manufacturing purposes? A. Based on the experience of other railroads in this city, it would have two or three times that value as it does for commercial purposes.

Page 186 Q. So you would say that would have a valuation of possibly $150,000 a year, would it? A. Based upon some of the figures paid by the railroads in this city.

Q. According to that estimate, if the Anheuser-Busch Brewing Association received $150,000 a year from the Manufacturers' Railway for the privilege of hauling the traffic of the Brewery, that lease would be of value to the Manufacturers' Railway? A. If that brings in enough revenue from the freight standpoint to make it worth a rental of that amount, it would be. The revenue, to my mind, has a great deal to do with it, as to whether it is a profitable or an expensive lease for any concern. Ordinarily I should think it would

depend upon the amount of freight they would receive in exchange for the $150,000.

Q. In other words, you think they would be justified in paying the Anheuser-Busch Brewing Association $150,000, if they got enough freight from the Brewery to justify that payment? A. I don't know anything about that part of it. I am not in the railroad business.

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Q. You are testifying as an expert on the value of a realty lease. A. Real estate value. I am basing the value of that lease on values of the abutting and adjoining property as for general commercial purposes, and not for transportation, although taking that into consideration, of course.

I remember the time when the Anheuser-Busch Brewing Association used to haul its products to the trunk line by wagons, teams and drays. I presume that method of getting its products to the trunk line was expensive to the Brewery. I never looked into that feature of it. I don't know how the stock of the railway is held. I can remember the time when the railroad operations began there. I knew nothing about the existence of this lease until quite recently, two or three weeks ago.

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Q. Would you not say that it is a pretty good arrangement for the Brewery to make its shipments bring a revenue for the hauling, instead of the hauling costing it money? A. Well, that can be looked at from two sides. The Brewery, possibly, with a certain amount of real estate, instead of making an outright sale, made a lease. They are entitled to revenue on that lease, and they can get—

Q. Do you know of any other industrial plant anywhere, with plant facility tracks within the walls, that is able to make those tracks a source of income instead

of expense? A. I know of no other plant in that condition; no, sir. I don't know whether there are any or not.

Q. You can see, can you not, Mr. Hildenbrandt, that under such an arrangement the Manufacturers' Railway could pay the Brewery such an amount as would operate as a rebate to the Brewery on its shipments, and give the Brewery an advantage over other shippers to that extent? A. I presume a thing of that kind would be possible.

Q. Would you consider this lease whereby the Brewery received an income for its hauling, instead of the hauling being an expense to it, a good thing for the Brewery? A. I don't think that can be classified as an income to the Brewery for its hauling? That is an income to the Brewery for the use of that ground. The Brewery owned the ground; they have leased that
189 ground to the Railway Company, and the Railway Company pays them a rent.

Q. Suppose the Brewery Company had no such lease, and it would have to haul its cars to the Manufacturers' Railway, it would have to use this ground for just the same purpose it is now used for; it would have to use the same number of cars, would it not? A. I presume it would, yes, sir.

Q. That, of course, would be an expense to the Brewery, would it not? A. Well, I am not familiar with railroad operations. I don't know how railroads charge, on what they charge for their services.

Q. You know, as a business man, that if the Brewery had no lease of this character, and had to haul its products over its own plant facility tracks to the common carrier (the Manufacturers' Railway) at its own expense, that the expense to the Brewery would be considerable? A. I should think it would be—yes.

Q. Then if the Brewery can make a contract or lease with the Manufacturers' Railway Company whereby instead of that haul being an expense to the Brewery it becomes a source of income to the extent of $24,000 a year, that is a pretty good contract for the Brewery, is it not? A. It looks that way, yes, sir.

Q. If that lease is such a good thing for the Brewery,
Page 190 how can it be so valuable to the Manufacturers' Railway? A. Again I have to state that if the Manufacturers' Railway wants switching facilities, as a rule they buy them. I don't know what was in the minds of those people when those leases were made. I am looking at the thing as it is presented to me today? Here is a piece of ground owned by Smith, and there is Jones who wants it. He takes it and pays so much money for it per annum. When the lease was made that property was very cheap, and the lease was cheap. Today there has been a change in conditions. Property has risen in value, and the result is that today there is a difference of those figures mentioned in our report on these actual ground leases. I might cite you a similar case, of the Mercantile Club: that lease was made in the 80's by the Shaw Estate for $10,000 a year. Today, if that corner were to be leased, it would bring $40,000 a year. The Mercantile Club has been offered $700,000 in cash for their lease. In that respect it is an asset. This, to me, looks like a very similar and identical condition.

Q. That is just the difficulty with Mr. Pitzman and yourself. As real estate men you can value a lease just the same as if it were a lease of the Mercantile Club building— A. It appeals to me from that standpoint.

Q. —but this is an entirely different proposition?

A. If it is different, of course, possibly our basis is wrong.

Q. Here the Manufacturers' Railway is leasing tracks that are plant facilities of the Anheuser-Busch
Page 191 Brewing Association, and it would cost the Anheuser-Busch Brewing Association a great deal to haul its products over these tracks to the point of connection with the Manufacturers' Railway if it had no such lease, and it would be the duty of the Anheuser-Busch Brewing Association to deliver its products to the common carrier, and to do its own hauling and its own freightage over its plant facility tracks? A. Yes, sir.

Q. Now, then, the common carrier comes along, and not only says, "We will do that for you; we will keep your tracks up; but we will pay you $24,000 a year in addition." That makes it a very different proposition from the lease of ground upon which a building is afterwards erected, and then the ground increases in value; in such a case you can easily estimate the value of your lease, but in the instance of these plant facility tracks owned by the Manufacturers' Railway the obligation is on the Manufacturers' Railway to pay $24,000 a year, that it would otherwise not have to pay at all. So you can hardly say that such a lease would have value to the Manufacturers' Railway. Its value would be on the other hand, to the Brewery, would it not? A. If your theory of the situation figured out from the railroad end of it is correct, I presume the answer must be yes to that question.

Page 192 **Re-direct examination, by Mr. Andrews:** Q. Suppose the St. Louis, Iron Mountain & Southern Railway should next week buy the Manufacturers' Railway, and own these tracks now owned by the Manufacturers' Railway, and assume the lease of $24,000 a year which

the Manufacturers' Railway pays: Following the Governor's question, that might still be a very good lease for the Anheuser-Busch Brewing Association, might it not? A. Yes, sir.

Q. And yet it would also be a valuable lease to the Iron Mountain, would it not? A. Absolutely; and that market value of the real estate covered by the lease, and the present value of this lease, I would figure just the same as I have in regard to the Manufacturers' Railway; it would not make a bit of difference. It would be just as favorable a lease, and save the Brewing Association from hauling its Brewery product down to the river if the Iron Mountain Railroad owned these tracks.

Re-cross-examination, by Gov. Folk: Q. Are you fa-
Page 193 miliar with that theory of economics that there can be no asset without a corresponding liability? A. There is a good deal of difference of opinion on that. A lease is substantially a mutual arrangement by which both sides are benefited; one party pays, and the other party gives up something for which this party pays for the use. It is supposed to be mutual.

Q. You can see, though, that the benefit from this lease goes to the Anheuser-Busch Brewing Association, in getting the service performed under this lease, that without it, it would have to perform for itself under heavy expense? A. I cannot separate that proposition. If you take it from that standpoint, then you overlook the fact that the Brewing Association gave up so many square feet of ground for which they get nothing.

Q. But they would have to use that ground for just the same purpose as they now use it for, for standing cars and for loading and unloading cars, just the same as if they had no lease, and they would have to carry

those cars to the connection, to the common carrier, at their own expense, if they had no such lease, making the lease become of great benefit to the Brewing Association— A. Certainly.

Q. —and turning that expense into an income? A. It is a benefit; there is no question about it.

Page 194 **Re-cross-examination, by Mr. Esterline:** I have forgotten now who the person was who employed me. Mr. Andrews, Mr. Kirby, and Mr. Moore were all together. It was on behalf of the Manufacturers' Railway. I have known Mr. Kirby for a great many years, and Mr. Moore the last five or six years. I have been doing work for the Anheuser-Busch Brewing Association and the Manufacturers' Railway for a great many years. I am familiar with conditions down there, and have been for a great many years, including the locations and values of property. I was not a witness at any time before the Interstate Commerce Commission
Page 195 in the case of the Manufacturers' Railway Company vs. St. Louis, Iron Mountain & Southern Railroad, No. 3151 I. C. C. I have been living in St. Louis continuously, was born and raised here. If I had been called as a witness in that case I could have given the same testimony then, if I had been asked to do so, that I have given this afternoon, except so far as conditions may have changed. The general conditions down there are the same as to the location of the Brewery, the railroad, and the respective yards. Such changes as have taken place in the last two or three years have been minor changes at some particular point.

Re-cross-examination, by Gov. Folk: I concur in what Mr. Pitzman said about the lease from the city of St. Louis under which the Manufacturers' Railway
Page 196 pays the city only $4,000 a year. Q. In other words,

the Manufacturers' Railway is $14,000 a year ahead of the city of St. Louis? A. They are, based upon the present values of that ground.

Q. When the city leased it, it knew that a railroad was to be placed there, did it not? A. I don't know. I suppose so.

I think they ought to have known that whatever enhancement of value would result from placing the road there, would come. It is not my idea exactly that the Manufacturers' Railway got ahead of the city to the extent of $14,000 a year. They are ahead of them, of course, at present, but there have been changes in that section. The change has been partially on account of the railway being placed on the land, and the development of the commercial end down in that section which has resulted from the railway being there, and the land
Page 197 has been filled up. When the city leased that land to the Railway, I think the city knew it was to be used for railroad purposes. I don't know who made the lease, but they ought to have known what was going to happen in the way of a corresponding enhancement of value.

Q. They ought to have known that they were giving a lease for $4,000 a year worth a great deal more than that? A. No, at that time it was not worth more. They ought to have known that the inevitable development that would follow the location of a railroad would create values. I think they were short-sighted to that extent.

Re-direct examination, by Mr. Andrews: I consider the condition the ground was in when the lease was made was such that they could not have gotten one-half that rental from anybody except the railroad, so

that the railroad did not get any advantage at the time the lease was made.

198 **Re-cross-examination, by Gov. Folk:** If I had been a member of the City body which made the lease, and they came to me, I certainly would have said: "You are going to put a railroad here that is going to make this ground much more valuable than it is now."

Re-direct examination, by Mr. Andrews: Q. In your opinion, could the city have received $4,000 a year for that land from anyone else than the Manufacturers' Railway at that time? A. No, nobody could have used it there except a railroad.

Re-cross-examination, by Gov. Folk: If I had been a member of the City body that made the lease, I don't think I would have stood for it, knowing that building
199 a railroad there would enhance its value to such an extent that $4,000 would not be fair to the city of St. Louis.

Re-direct examination, by Mr. Andrews: I would have tried to discount the future.

Re-cross-examination, by Gov. Folk: They would have paid more, if I had been there.

Re-direct examination, by Mr. Andrews: Q. You said the only party who would pay anything like $4,000 was a railroad? A. I would only have been one though, there, in a great big body. I did state that that was all the land was worth at that time. The record shows that.

Re-cross-examination, by Gov. Folk: But I would have held them up more if I could; that is human nature.

Page 200 **GEORGE F. MOORE, a witness called by the petitioner, Manufacturers Railway Company, being duly sworn and examined, testified:**

Direct examination, by Mr. Andrews: My name is G. F. Moore; residence, St. Louis, Missouri. I am President of the Manufacturers Railway, and have testified several times in case I. C. C. Docket 3151. Q. Had the Manufacturers Railway Company an effective tariff on file with the Interstate Commerce Commission March 17, 1913; if so, give its number and its title? A. The Manufacturers Railway was represented in the St. Louis-East St. Louis Terminal Lines' switching tariff No. 1-F, I. C. C. No. 973, and supplements thereto, issued February 5, 1913, effective on interstate business March 17, 1913, the publication of our particular part of this tariff appearing on page 52. This tariff was superseded by another one issued January 28th, 1914, No. 1-G, I. C. C. No. 1034, and the particular part
Page 201 of this publication affecting the Manufacturers Railway appears on page 52, Item No. 390.

Both of these tariffs were published showing the Manufacturers Railway Company as a participating carrier, on page 3 of the tariff quoting our power of attorney, form No. 4, as the authority of Mr. F. A. Leland to act as agent of the Manufacturers Railway in publishing this tariff.

These tariffs have been effective since March 17, 1913, and for a time prior thereto.

Q. Has the Railway Company issued such concurrences with any trunk line as would make the order of the Commission in cause I. C. C. 3151 effective?

Gov. Folk: That is objected to as calling for a conclusion.

Mr. Esterline: The record of the Commission is the best evidence.

A. The Manufacturers' Railway has issued concurrences which would enable all roads to comply with one of the alternates presented in that order. I mean all roads under the concurrences now issued, and all tariff publishing bureaus involved in the publication of tariffs for the roads can publish to and from points on the Manufacturers Railway a rate or rates not greater
ge 202 than the rates contemporaneously in effect to other points in the St. Louis rate zone. We have not issued an open concurrence that would enable the trunk lines, or other tariff publishing bureaus, to publish a tariff in which the Manufacturers Railway would be a participating carrier, that would make a greater rate to and from points on the Manufacturers Railway than is contemporaneously in effect to other points in the St. Louis rate zone.

Mr. Esterline: I want to move to strike out the answer on the ground that the question whether rates are or are not in force is to be determined by the tariffs published and filed with the Interstate Commerce Commission and not by oral testimony of a witness.

The Witness (proceeding): I have at the office, but not with me, the copies of the concurrences which we filed. I can obtain them.

Gov. Folk: Do I understand there is any contention here that the Manufacturers Railway has not concurred in the tariffs filed by the trunk lines on the St.
ge 203 Louis basis? A. We have concurred in tariffs quoting the St. Louis rate to and from points on the Manufacturers Railway. I tried to make that plain in the first part of my answer.

Q. As we understand, all of the trunk lines entering the City of St. Louis, with the exception of the Cotton Belt and the L. & N., have filed tariffs to points along the line of the Manufacturers Railway, on the St. Louis basis, and the Manufacturers Railway has concurred in those tariffs? A. That is substantially my understanding, excepting only the L. & N. road, not excepting the Cotton Belt. I understand the Cotton Belt have some tariffs filed, and I think I can state positively that one of their tariffs has never been cancelled by the Commission, and under the operations of that tariff we have received constantly the $4.50 absorption carried by it, on business to and from the Manufacturers Railway, that is, certain inbound business. We are receiving allowances now from the Cotton Belt on a certain tariff, the number of which I cannot give you, but it is the lumber tariff. I cannot tell you what territory it covers, but I think the Cotton Belt will have their tariff man to testify as to the tariffs.

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Direct examination (resumed): Q. As to these occurrences you have spoken of, you do not wish to be understood, do you, that you agreed on any division of that St. Louis rate under these tariffs in which you say you concurred? A. The concurrences are not given for the purpose of determining divisions, and the matter of division as between the trunk lines immediately connecting with the Manufacturers Railway and the Manufacturers Railway, is practically in suspense, as I have advised each line that we are not prepared to accept a division of $2.50 until we are required to do so.

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Gov. Folk: The question of division has not yet been passed upon by the Commission. That remains a matter to be taken into consideration in the future.

Direct examination, resumed, by Mr. Andrews: Q. Mr. Moore, please examine the map that is before you, which was offered in evidence by Mr. Kendrick as his Exhibit No. 1, and state which tracks as colored on that map are owned by the Anheuser-Busch Brewing Association? A. The tracks colored in red are owned by the Anheuser-Busch Brewing Association. Those are all the tracks so owned.

Q. Mr. Kendrick stated the other day that the total mileage of the tracks shown in red was about three miles, and it appears that you reported to the Commission that the mileage owned by the Association and leased to the Railway was about six miles: What have you to say about that? A. It was not my intention to report to the Commission the actual owned mileage of the Anheuser-Busch Brewing Association as being 6.84. It was my intention to report in the proceeding before the Commission that within the leased area, bounded by First Street on the east; Thirteenth Street on the west; Lynch Street on the north and Utah Street on the south, there was about 6.84 miles of track that
206 was used largely for the service of the Anheuser-Busch Brewing Association, and that testimony was developed by the Examiner, and the defendants, who seemed desirous of ascertaining just about what proportion of the trackage operated by the Manufacturers Railway was used in the service of the Brewery.

The engineer who made the measurement between some of these cuts, in order to ascertain the exact mileage, knowing that all of that trackage was on ground under lease to the Railroad, or franchise, reported it as leased track. This made no particular difference to anyone concerned, either the State of Missouri, or the general public, so far as I could see, and without trying to definitely segregate the ownership of the actual

trackage in this area I awaited the time when we would have a complete re-check of the entire property, and our records up to and including June 30, 1914, will show 6.84 miles of leased track, but in 1915, they will show what Mr. Kendrick has determined to be tracks belonging to the Brewery, approximately three miles as leased track, and the other tracks in this area (which are colored yellow and green) will be reported as "owned" tracks.

As to the railroad located on what is known as the Arsenal property, as to the ownership of those tracks,
Page 207 and who paid for them, and for the right-of-way: There are about 650 feet of track located in the Arsenal, and in addition three parallel tracts of ground immediately east of the engineer depot, the waiver of which is held by the Anheuser-Busch Brewing Association; the tracks mentioned are all owned, and were laid at the expense of the Manufacturers' Railway. The tract inside, in addition to a building which was erected for the Government, was given as consideration for the waived right to use the property east of the wall. The total expense of the building and of the tracks was borne by the Manufacturers Railway Company.

Q. Mr. Moore, from your statement, then, it appears that the Railway paid the entire consideration to the Government for this ground it received or that the Anheuser-Busch Brewing Association received: Is that true? A. The exact answer to that would be that the Anheuser-Busch Brewing Association paid the construction expense of the house and afterwards charged the Railway with them and the Railway took them up; so, as it stands now and has stood for a number of years, the Manufacturers Railway carries the com-

plete investment that was made in order to secure the right mentioned.

Page 208 It is a fact that we have presented to the War Department certain documents and requests for the purpose of securing the waiver right for the Manufacturers Railway instead of for the Anheuser-Busch Brewing Association. Just how far those negotiations have gone I don't know.

Q. I wish you would state briefly what portion of the tracks shown on this map are not accessible to the public or open to the public? A. I have scaled a map which is made on the basis of one inch equaling 200 feet, and find that 1,750 feet of this track (colored in red) either enters buildings or passageways in such a manner as would make it undesirable for public use. It requires about 50 feet of track to accommodate a car, so that would mean about 35 car spaces. There is a certain other kind of shedded track, probably I had better say house track, amounting to approximately sixteen hundred feet, built within the shop of the St. Louis Refrigerator Car Company. These tracks were constructed at the expense of the Car Company and are used largely by them for constructing cars, reconstructing cars, and repairing cars, but occasionally they are used to receive cars loading in interstate commerce. This last use, however, is almost negligible.

Q. There has been a good deal said here about tracks within the walled premises of the Brewery: What have you to say about walled premises? A. Aside
Page 209 from the tracks I have just mentioned, there is no team track so enclosed as not to be accessible to teams for the general public. To make that even more specific I will say they are accessible to teams operated by part of the general public after the Anheuser-Busch

Brewing Association has been excluded, the Anheuser-Busch being by far the greatest team customer, or patron, or shipper, that the Manufacturers Railway has.

There is a wrong idea prevalent which I would like to correct: Little, if any, of the Anheuser-Busch outbound business is loaded into the cars handled by the Manufacturers Railway, without first having been teamed, or using a device called "carriers" which takes the place of teams, and their average haul by team is longer than the average haul of the American Brewery, or the Obert Brewery, both institutions using the Manufacturers Railway facilities.

Concerning the Ninth Street Yard being available to the use of the public: As an entire yard it is less used by the public than any other yard operated by the Manufacturers Railway. It has, however, two large gateways, and the entire yard is paved. It is only occasionally that we are asked to use these yards by any shipper, but since I have been connected with the Company I can state positively that they have been used to a negligible extent for other shippers than the Anheuser-Busch Brewery.

Page 210 If a shipper asked the Railway Company to place a car in those yards for loading, it would do so; likewise in any yards that have been mentioned or shown on this plat. It would also deliver a car in any of those yards if requested by an outside shipper; I would like to qualify that this much: Should a patron come and explain to me that he wanted the use of a certain one of our advertised public team tracks, and I could convince that shipper that he could secure better service at some other point, I do endeavor at times to so influence the shippers, but when it comes to the demand for service no one has ever been refused the use of any track operated by the Manufacturers Railway. That

I have substantiated this morning (I speak now of my own personal knowledge) and I have asked my yard clerk, who has been in the employ of the Company three years and whose duty it is to go and take numbers of the cars as they stand on the property, and he informed me this morning that he is willing to qualify and testify that since he has been with the Manufacturers Railway there is no individual yard that has not been used by the general public, as distinguished from the Anheuser-Busch Brewing Association.

Mr. Esterline: I move to strike out the answer of the witness as to what the agent or employe of the Manufacturers Railway reported to him, and what he could testify to, as hearsay.

211 **Direct Examination (Resumed):** A. I am not able to give the original cost of construction of this Railway as of January 1, 1915, because I don't know. When I came here in February, 1909, and received at the hands of an auditing committee a statement, and in addition to that statement such records as were kept of the railroad, I could only find an apparent value of something over $300,000.00, and on this basis I opened the accounts of the Railway under the classifications provided by the Interstate Commerce Commission, and I am certain that this value did not reflect the at that time value of the railway property. Not knowing the exact basis from which to start, I cannot give you the construction cost of the railroad as of this date, but I can from that original figure build up the additions and betterments and value of other property which has been added to the railroad since my administration began; that is, I can state the amount expended in permanent improvements since I took charge of the property up to January 1, 1915.

I do so by saying that beginning with a book value of $300,899.65, the book value as closed January 31,
Page 212 1915, reflects a value of $1,386,247.40; the difference between the initial book value and the value as of January 31, 1915, representing improvements and additions to equipment amounting to $560,008.75, and addition to real estate amounting to $525,349.00.

Q. Please give us the amount of the market value of the bonds and stock of the Railway Company? A. The amount of common stock is $1,500,000.00, of which $1,400,000.00 has been paid for in actual cash and at par; and $100,000.00 was distributed as a stock dividend. In addition to the capital stock of the Company we have no bonds, but we do have a current liability represented by a note amounting to $375,000.00, executed when money was secured from the trustees under the will of the late Adolphus Busch; the note bears five per cent interest.

Q. Is there any market for the stock? A. The only way of answering that would be, that I have never received from anyone a request to purchase this stock from its present holders. It is not quoted in the public markets, so far as I know, and it is not traded in, so far as I know. Nor is it listed on the St. Louis Stock Exchange, to my knowledge.

As to the different kinds of service performed by the Railway in handling cars: It performs a switch-
Page 213 ing and terminal service. This service consists in handling carload freight moving in interstate and intrastate business, movements of a supplementary nature affecting either the interstate or the intrastate movements. The weighing of cars I class as a supplementary movement, and a number of the so-called intra-plant movements I would say were simply intra-plant movements.

The carload traffic handled by the Manufacturers' Railway is sometimes known as "tallied" carload, where the contents of the car is either received through a check clerk or delivered through a check clerk, and other of the carloads known as "trap" cars, or cars made up of different individual shipments which are loaded into a car and delivered to some of the trunk lines for further transportation.

Page 214 We have interchanges with both the St. Louis, Iron Mountain & Southern and the St. Louis Transfer Railway, and that part of the business that I mention as being traffic moving in interstate and intrastate movements would comprise the traffic that has been interchanged between the Manufacturers Railway and its immediate connections which you have just named. We have no physical connection with any railway excepting the Iron Mountain and the St. Louis Transfer Railways.

There is another movement where we move cars for the purpose of weighing. There is a third movement which we perform, namely, the moving of a car from one part of the Anheuser-Busch Brewing Association plant to another part of that plant; we call that the intra-plant movement; and those three movements (omitting from consideration now the "trap car" movements referred to) are all the movements performed by the Railway Company in the handling of cars.

Page 215 Eighty-five and three-tenths (85.3) per cent of all cars interchanged with the St. Louis Transfer Railway and with the St. Louis Iron Mountain & Southern Railway, are cars moving in interstate commerce. I have here an exhibit pointing out how I reached that result.

(The exhibit referred to was marked Exhibit A to Mr. Moore's testimony, and consists of six sheets.)

(MOORE'S EXHIBIT A.)

RECAPITULATION.

ANALYSIS OF TRAFFIC FOR FIVE MONTHS.

CAR LOADS INTERCHANGED.

Month and Year.	Interstate.	Intrastate.
July, 1912	5029	818
January, 1913	3479	576
April, 1913	3856	665
July, 1913	5840	1076
October, 1914	3529	613
Totals	21733	3748

Total Car Loads Interchange.....25481

85.3% Interstate.

14.7% Intrastate.

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JULY, 1912.

	INTERSTATE.			INTRASTATE.		
	Outbound.	Inbound.	Total.	Outbound.	Inbound.	Total.
B. & O.	55	156	211	...	...	...
C. & A.	230	140	370	...	...	...
C. & E. I.	124	76	200	...	...	...
C. B. & Q.	216	183	399	57	36	93
C. C. C. & St. L.	124	92	216	...	...	...
C. P. & St. L.	52	63	115	...	...	...
C. R. I. & P.	37	12	49	69	35	104
E. St. L. & Sub.	...	1	1	...	...	...
Illinois Central	206	198	404	...	...	...
L. & M.	9	4	13	...	...	...
L. & N.	52	50	102	...	...	...
M., K. & T.	83	62	145	40	10	50
Mo. Pac.	133	65	198	85	61	146
M. & O.	154	128	282	...	...	...
St. L., I. M. & S.	262	146	408	121	42	163
St. L. & O'Fallon	...	8	8	...	...	...
St. L. S. W.	250	107	357	...	...	...
St. L. T. & E.	2	3	5	...	...	...
St. L. S. F.	97	56	153	65	65	130
Southern.	169	100	269	...	...	...
T., St. L. & W.	140	59	199	...	...	...
Vandalia.	65	303	368	...	...	...
Wabash, E.	115	70	185	...	...	...
Wabash, W.	192	88	280	47	29	76
Terminal R. R.	52	40	92	35	21	56
Total.	2819	2210	5029	519	299	818

Interstate proportion for month is 86 per cent of Traffic.

Intrastate proportion for month is 139 per cent of Traffic.

JANUARY, 1913.

	INTERSTATE.			INTRASTATE.		
	Outbound.	Inbound.	Total.	Outbound.	Inbound.	Total.
B. & O.	61	115	176	...	...	...
C. & A.	127	124	251	...	...	...
C. & E. I.	21	63	84	...	...	...
C., B. & Q.	109	142	251	13	28	41
C., C., C. & St. L.	71	103	174	...	...	...
C., P. & St. L.	32	67	99	...	...	...
C., R. I. & P.	7	3	10	45	29	74
Illinois Central	129	196	325	...	...	...
L. & M.	4	10	14	...	...	...
L. & N.	26	39	65	...	...	...
M., K. & T.	45	40	85	25	6	31
Mo. Pacific	59	61	120	30	59	89
M. & O.	74	94	168	...	...	...
St. L., I. M. & S.	79	128	207	29	64	93
St. L. & O'Fallon	...	11	11	...	...	...
St. L. S. W.	156	87	243	...	...	...
St. L., T. & E.	1	2	3	...	...	...
St. L. & S. F.	38	75	113	32	50	82
Southern	104	58	162	...	...	...
T., St. L. & W.	107	58	165	...	...	...
Vandalia	52	250	302	...	...	...
Wabash, E.	65	99	164	...	...	...
Wabash, W.	01	72	168	32	53	85
Terminal R. R.	45	79	124	58	23	81
Total.	1503	1976	3479	264	312	576

Interstate proportion for month is 85 per cent of Traffic.

Intrastate proportion for month is 142 per cent of Traffic.

APRIL, 1913.

	INTERSTATE.			INTRASTATE.		
	Outbound.	Inbound.	Total.	Outbound.	Inbound.	Total.
B. & O.	37	45	82	...	...	...
C. & A.	216	129	345	...	...	...
C. & E. I.	60	111	171	21	...	21
C., B. & Q.	135	143	278	21	29	50
C., C., C. & St. L.	74	58	132	...	...	...
C., P. & St. L.	27	63	90	...	...	...
C., R. I. & P.	36	18	54	34	26	60
E. St. L. & Sub.	...	1	1	...	...	...
Illinois Central	121	118	239	...	...	...
L. & M.	5	5	10	...	...	...
L. & N.	43	28	71	...	...	...
M., K. & T.	86	27	113	21	11	32
Mo. Pacific	95	55	150	36	70	106
M. & O.	60	54	114	...	...	...
St. L. B. Elec.	...	9	9	...	...	...
St. L., I. M. & S.	111	189	300	42	59	101
St. L. & O'Fallon	...	11	11	...	...	...
St. L. S. W.	217	116	333	27	...	27
St. L., T. & E.	1	6	7	...	...	...
St. L. S. F.	79	83	162	37	55	92
Southern.	99	51	150	...	...	...
T., St. L. & W.	121	72	193	...	...	...
Vandalia.	50	241	291	...	...	...
Wabash, E.	89	101	190	...	...	...
Wabash, W.	131	77	208	49	34	83
Terminal R. R.	52	100	152	66	27	93
Total.	1945	1911	3856	354	311	665

Interstate proportion for month is 85 per cent of Traffic.

Intrastate proportion for month is 147 per cent of Traffic.

JULY, 1913.

	INTERSTATE.			INTRASTATE.		
	Outbound.	Inbound.	Total.	Outbound.	Inbound.	Total.
B. & O.	94	79	173	...	...	...
C. & A.	282	139	421	...	...	...
C. & E. I.	103	39	142	24	...	24
C., B. & Q.	223	181	404	113	38	151
C., C., C. & St. L.	193	109	302	...	...	...
C., P. & St. L.	55	99	154	...	...	...
C., R. I. & P.	65	32	97	35	35	70
E. St. L. & Sub.	...	8	8	...	...	...
Illinois Central.	330	163	493	...	...	...
L. & M.	8	5	13	...	...	...
L. & N.	112	44	156	...	...	...
M., K. & T.	138	74	212	53	13	66
Mo. Pacific.	214	86	300	62	50	112
M. & O.	259	88	347	...	...	...
St. L. B. Elec.	...	2	2	...	...	...
St. L., I. M. & S.	146	211	357	154	51	205
St. L. & O'Fallon.	...	13	13	...	...	...
St. L. S. W.	227	132	359	14	...	14
St. L., T. & E.	2	2	4	...	...	...
St. L. & S. F.	124	87	211	83	68	151
Southern.	191	90	281	...	...	...
T., St. L. & W.	169	76	245	...	...	...
Vandalia.	80	331	411	...	...	...
Wabash, E.	115	102	217	...	...	...
Wabash, W.	172	107	279	130	59	189
Terminal R. R.	150	89	239	72	22	94
Total.	3452	2388	5840	740	336	1076

Interstate proportion for month is 84 per cent of Traffic.

Intrastate proportion for month is 155 per cent of Traffic.

OCTOBER, 1914.

	INTERSTATE.			INTRASTATE.		
	Outbound.	Inbound.	Total.	Outbound.	Inbound.	Total.
B. & O.	46	93	139	...	...	...
C. & A.	71	70	141	...	...	...
C. & E. I.	20	26	46	43	...	43
C., B. & Q.	107	159	266	17	22	39
C., C., C. & St. L.	76	68	144	...	...	...
C. P. & St. L.	160	166	326	...	...	...
C., R. I. & P.	42	26	68	9	4	13
Illinois Central.	104	172	276	...	...	...
Ill. Tract. Sys.	4	1	5	...	...	...
L. & M.	3	16	19	...	...	...
L. & N.	26	26	52	...	...	...
M., K. & T.	46	45	91	24	7	31
Mo. Pacific.	112	58	170	78	80	158
M. & O.	68	55	123	...	...	...
St. L., I. M. & S.	156	179	335	48	43	91
St. L. S. W.	85	62	147	18	...	18
St. L. & O'Fallon.	...	216	216	...	...	...
St. L. & S. F.	63	42	105	33	53	86
St. L., T. & E.	1	2	3	...	...	...
Southern.	73	47	120	...	...	...
T., St. L. & W.	128	90	218	...	...	...
Vandalia.	62	55	117	...	...	...
Wabash, E.	51	37	88	...	...	...
Wabash, W.	70	101	171	30	20	50
Terminal R. R.	34	109	143	56	28	84
Total.	1608	1921	3529	356	257	613

Interstate proportion for month is 85 per cent of Traffic.

Intrastate proportion for month is 147 per cent of Traffic.

Direct Examination (resumed): Q. Please state generally of what this exhibit consists. State fully how you reached your result and what this shows beginning with July, 1912, if you wish to. A. The records of the Manufacturers Railway are compiled on a daily basis insofar as the movement of cars is concerned, and not on a monthly or annual basis. Therefore, in order to determine an average that would apply to the business as distinguished between interstate and intrastate, I have selected five different months using a month out of spring, summer, fall and winter, and using some different years, in order to find the level average of cars moving in interstate business as compared to the total number of cars interchanged. The months selected were: July, 1912, which showed a total interchange movement of 5,029 interstate cars, and 818 intrastate cars. The proportion of the total interchange cars of that month which moved in interstate
Page 216 commerce was 86 per cent; January, 1913, showed 3,479 cars moved in interstate business and 576 in intrastate, the interstate proportion for the month being 85 per cent of the traffic interchanged; April, 1913, showed interstate, 3,856 cars; intrastate, 665 cars, the interstate proportion for the month being 85 per cent of the traffic interchanged; July, 1913, showed 5,840 interstate cars, and 1,076 intrastate cars, the percentage of the interstate business for that month being 84 per cent of the interchanged traffic; the month of October, 1913, showed interstate business, 3,529 cars, and intrastate, 613 cars; the interstate proportion for that month being 85 per cent of the traffic handled; and then, finding such a small variation in percentages, I have added the interstate movements for the five months and the intrastate movements for the five months, and find that the interstate movement level

average for that period is 85.3 per cent, which I believe will prevail throughout any period of time that you might care to select in the last five years.

The percentage of cars moved for weighing or weigh movements, moving in interstate commerce, is substantially the same as the percentage of the interchanged movements moving in interstate commerce, namely, 85.3 per cent. This was ascertained by taking a number of months and dividing the intrastate from
Page 217 the interstate business and securing the percentage in the same manner as is shown in Exhibit A.

The percentage of all cars moved in intra-plant switching, moved in interstate commerce, is 19.9 per cent, i. e., of the cars handled under our general heading of "intra-plant movements" which moved in interstate commerce. This percentage was obtained by the same method that we secured the 85.3 per cent, as shown in Exhibit A.

Q. Please take February, 1911, January, 1912, February, 1913, and December, 1914, and state what per cent of the total movements of loaded cars for those months were movements of cars moving in interstate commerce?

Mr. Esterline: I would like to note in the record an objection to this line of examination and testimony as to what cars moved in interstate commerce upon the ground that that is a conclusion on the part of the witness and it does not appear that there are any facts upon which to base a conclusion. I would like that objection to apply to the other questions, and to those that follow, on the same subject.

Mr. Andrews: Q. Have the figures that you have referred to as cars moving in interstate commerce been taken from the billings? A. We secured the figures

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that are set up in Exhibit A, and the other figures used for the purpose of obtaining a level percentage, from the records of the office, which would be, primarily,
Page 218 shipping tickets on outbound business; waybills on inbound business, and what are known in local office work as "freight received and forwarded" registers. These records have been gone over with a view of ascertaining to what point outbound shipments were consigned and from what point inbound shipments came. And in that way we were enabled to determine whether the business was interstate or intrastate. That is the method which we applied in arriving at the results I have testified to.

The percentage of the total movements of loaded cars which moved in interstate commerce during February, 1911, January, 1912, February, 1913, and December, 1914, is made up by combining the amount of business handled, on the percentages that I have just submitted and testified to and in this particular case the average percentage of the use of the property for interstate commerce is 79.3 per cent. In June, 1911, August, 1912, July, 1913, and July, 1914, 77.5 per cent of the entire loaded car movements moved in interstate commerce.

Page 219 During the entire fiscal year ended June 30, 1913, 79.58 per cent of the total movements of loaded cars for that year were movements of cars moving in interstate commerce.

Q. Take the entire fiscal year ended June 30, 1914, and state what per cent of the total movements of loaded cars for that year were movements of cars moving in interstate commerce?

Mr. Esterline: I understand this is all going in subject to my objection?

Mr. Andrews: Subject to your objection.

Mr. Esterline: I want to object to each question as not being the best evidence, and it is a conclusion.

The Witness: The interstate movements for that period represented 78.87 per cent of the total movements of the railway.

During the last six months of the calendar year 1914, 77.3 per cent of the total movements of loaded cars moved in interstate commerce. In arriving at that
Page 220 percentage last given by me I used the data referred to in my previous answer to ascertain whether the cars were moved in interstate commerce or intrastate commerce.

Concerning the cost to the Company of making these various movements which I have referred to, considering such movements under the classification of interchange movements, intra-plant movements and weigh movements, I cannot say that there is any difference in the cost of the movements when so classified. There is at times a material difference in the cost of the individual movements handled under each class, but taking these movements as grouped, for any considerable period of time, I believe that the average cost of the movements of each class will be almost identical. I have tried in every way I could think of to determine whether the average cost of moving a car to have it weighed exceeds the average cost of moving a car for interchange with connections, or moving a car between one industry in the plant and another. The best way, to my notion, was to ride upon the engine doing the switching, for a certain length of time, and notice the
Page 221 business that that switch crew was handling during the time that I myself was with the engine. That I have done, and I would find the same crew and engine han-

dling all different classes of the named groups in one cut at times, and then at times I would find an engine moving with only one class of business as grouped, and I could not determine any difference in the cost of handling the placement of one class of business as compared with the placement of another class of business. This was brought out very clearly. It is easier to take four cars at a time and set them on one track than it would be to take the same four cars at four different times and set them on that track; that developed. But for the average cost of handling these groups, after riding probably thirty or forty different times with the switch crews, I could not differentiate between the cost. To summarize that: I believe it costs as much to the Manufacturers Railway to weigh a car upon which we receive 25 cents revenue as it does to make an intra-plant switch of a car upon which we receive $1.00 revenue; or to make an interchange delivery of a car upon which we hope to receive a larger revenue upon, or to make a city switch for which, by ordinance, we are limited to a revenue of $2.00.

To illustrate the similar movement with a cut of cars, for instance, involving each of these services: The switch crew's work would result in their daily performance laid out so as to have the same locomotive serve during the day a particular subdivision of the tracks
Page 222 of the Manufacturers Railway. Take, for instance, a locomotive serving the Dorcas Street tracks and the yards diverging from the Dorcas Street tracks. That locomotive may make eight or ten trips up and down Dorcas Street during the day. Following out one of the trips: They may have taken cars from the First Street Yard which contained freight coming from New York or from a point in Missouri; some empties that are going to New York or to a point in Missouri; some

car which was probably loaded at the bottle shop and goes up to Thirteenth Street to be unloaded, that last being an intra-plant movement; they would take these cars in hand and place them on their trip up to Thirteenth Street. In returning they would have with them loaded cars moving in interstate business and intrastate business. They would have cars that were made empty and not reloaded, that would be delivered back to the owners, or to the immediate connection, I should say, instead of owners, and they would come down Dorcas Street with such a cut of cars behind them. One of those cars that they picked up in the Thirteenth Street Yard someone might want weighed for some reason or other, and they would take that car down to the scales which are located between Arsenal and Utah Streets on the property that we received from the Government, and have it weighed. It might be that one of those cars from Thirteenth Street was partly loaded with beer in cases and it would be brought down and sent into the Second Street Yard as an intra-plant movement to be finished loading with keg beer. Each movement of a switch engine, I believe, will comprise more than one class of this group business, and
age 223 the business is handled just about as I have described it to you. That is from my personal observations.

So it has been impossible for me to segregate the cost of each of these particular services. I have stated that there is a difference of cost sometimes between handling two cars in a like business. For instance, if I must run up to the north end of my yard to do such service as I have described doing on Dorcas Street, then that particular part of that group of business which I have secured by making a trip up to the north end of our track would cost more than the service per-

formed on that particular group of tracks if it were nearer the base of our operations.

Our weigh movements are different from the weigh movements of trunk lines, inasmuch as we do not furnish weight to furnish a billing weight. I believe I can safely say that 90 per cent of our weighing is to test weights and is not as the ordinary trunk line weight, taking a string of cars and running them over the scales. It is nearly always an individual movement.

Page 224 I have adopted a method to show: First, the percentage of the use of the property in interstate commerce; second, the percentage of the cost of the operations apportioned to interstate commerce; third, the gross revenue that would have been derived from interstate commerce under tariffs similar to those at issue; and, fourth, of the percentage of gain on an amount that would represent the proportionate cost of such a part of the property as is used in interstate commerce.

I have selected certain periods of time and carried my computations to final conclusions.

Q. Please describe fully the results arrived at for the first period of time selected? A. The first period of time selected comprises four months, selected with a view of showing the months in four different years representing the fewest number of cars handled. I have termed this group the "Minimum group." For this computation I have selected February, 1911; January, 1912; February, 1913, and December, 1914.

It was impossible to make a detailed analysis of this business that would show the percentage of interstate business moved under a $2.00 per car rate, because some of the months in the earlier years were so set up
Page 225 that I could not secure the accurate information. This, however, would force me to assume that all of the in-

terstate business moved under the $4.50 rate, and therefore apparently shows a larger return upon the property investment.

The total number of loaded movements for the four months named was 16,022 cars. That was the total interchange movement, I should have said. Divided on a basis of 85.3 per cent showed 12,699 interstate movements, and 11,403 of these interstate movements made under a $4.50 revenue would produce $51,313.50. 1,006 supplementary interstate movements, or weigh movements of traffic moving in interstate commerce, at 25 cents each, would produce a revenue of $251.50. 290 supplementary interstate movements at $1.00 would produce a revenue of $290.00. The total gross revenue ascertained above would amount to $51,885.00.

The percentage of use of property for interstate movements in this period amounts to 79.3 percent of the total use of the property, which, represented in money, would be $590,287.00.

In order to arrive at the level cost of property used in the different months, I have taken the sum of the cost of road for each year under analysis, using the average cost of property for the four months under consideration. Having ascertained the operating expenses for the period (from records that are filed by the Railway with the Interstate Commerce Commis-
Page 226 sion) and applying 79.3 per cent in order to apportion that part of the operating expenses to interstate commerce, the following results were secured: 79.3 per cent of the operating expenses for the period would be $36,764.43. 79.3 per cent of the taxes for the period would be $2,044.29. 79.3 per cent of the rentals for the period would be $9,961.88.

This would produce a total expense of $48,770.60. Subtracting from the gross revenue the proportionate

expense herein enumerated, it would appear that we had a net gain in the four months under consideration of $3,074.40, which would represent 52/100 per cent, or a trifle over five mills on each one dollar of the apportioned value of the property use in interstate commerce.

Mr. Esterline: I move to strike out the answer of the witness on the ground that the interstate commerce movements have not been sufficiently shown; it does not appear that the cars actually moved in interstate commerce, and that the information given by the witness is not based on any direct knowledge of his own, but based on other evidence not produced, which is the best evidence.

Direct Examination (resumed): In making up this calculation I ascertained from the records of the Company in the same manner that I have detailed before in regard to the percentages heretofore given.

Page 227 I ascertained the percentages on the same basis as I have previously explained. I ascertained the "financial figures" (meaning the cost of the property) from the records of our office; I used the amount of money set up under the classifications as furnished by the Commission as meaning the "operating expenses"; and the taxes as the actual taxes that were paid; the rentals from the accrued rentals for the period, and the revenue I ascertained by applying to the percentage of the interstate business the actual revenue in two cases (the 25 cents and the $1.00) and the assumed revenue of $4.50 per car in the other cases.

I have already explained how I obtained my information in relation to the movement of the cars as to which were interstate and which were intrastate. In making the statement that I have just given, I used the

percentage that was previously explained, in segregating the interstate from the intrastate business. The
Page 228 records from which I reached the conclusion that certain cars moved in interstate and certain others moved in intrastate commerce were very voluminous.

I described fully the method pursued to ascertain whether cars moved in interstate or intrastate commerce—billing tickets, way-bills, and freight received and forwarded registers, as our record was put up on this basis. Each car represents an item of debit to the agent. If he makes 64,000 movements a year there are at least 64,000 items to cover those movements, in our accounts.

I have selected other months from which I have made calculations similar to those just stated. In the same years I have selected the months representing the maximum business transactions, namely, June, 1911;
Page 229 August, 1912; July, 1913, and July, 1914. The same method of ascertaining the percentages has been used in this calculation that has been previously explained. During the period we handled on that basis 22,122 interstate movements, making a total, when added to the intrastate movements, of 28,542 movements of loaded cars.

The percentage of interstate commerce movements for this period would be 77.5 per cent of the entire loaded car movements. 20,764 interstate movements at $4.50 per car would produce $93,438.00. 682 supplementary interstate movements at 25 cents a car would produce $170.50. 676 supplementary interstate movements at $1.00 would produce $676.00. Making a total gross revenue of $94,284.50.

77.5 per cent of the average property costs (and that average property costs was ascertained in the same way as the previous statement) would be $576,888.00.

77.5 per cent of the operating expenses for the period would be $45,978.98. 77.5 per cent of the taxes for the period would be $1,997.89. 77.5 per cent of the rentals accrued for the period would be $9,735.76.

Deducting the gross expenses from the gross revenue we find an apparent net gain for those months of $36,571.87, which would be 6.34 per cent on the dollar
Page 230 on the average property costs for the period, apportioned to the use of interstate commerce.

These two statements were made in order to show the lean and fat months of the years mentioned. The fixed property value, the taxes and the rentals will remain the same, and the operating expenses vary not as much, probably, as we would like them to with the light and heavy months, and it shows that on the lean months the gain is very small, and on the best months the gain is only 6.34 per cent, on the average cost of the property used in interstate business.

The property costs sets up by me was on the book value, i. e., an original basis of $300,800.00 and some odd dollars, plus some additions and betterments as have been made from time to time up to the periods included in these computations.

In my opinion the original basis of $300,899.65 did not truly represent the real cost or value of the railroad; it would not reflect probably as much as one-half the value of the railroad as it was when it was entered in the books of the company.

Page 231 As to operating expenses, taxes, rentals and the property cost that I have used in my computations, the figures all appear in the exhibits submitted in the record of the case known as I. C. C. Docket No. 3151; not, however, in the groups as I have used them, but the figures as they appear there can be used to verify the

figures that I have used here, and if not in that record they can be found in the various monthly reports that have been filed with the Interstate Commerce Commission.

I stated that I was not able to definitely segregate that part of the interchange business moving in interstate commerce upon which the railway would have received but $2.00 per car: I have prepared exhibits for periods during which I was able to accomplish that result, i. e., for the fiscal year ended June 30, 1913, the fiscal year ended June 30, 1914, and for a period covering the last six months of the calendar year of 1914.

For that year the groupings of our movements are as follows:

Page 232 Long haul interchange, 53,461 cars, 85.3 per cent of which is 45,602 cars, at $4.50 a car, producing $205,209.00. Short haul interchange, 5,832 cars, 85.3 per cent of which is 4,975 interstate movements, at $2.00 a car, producing a revenue of $9,950.00. City movements participated in only by the Manufacturers' Railway, 34 cars. Intra-plant movements 6,063 cars, 19.9 per cent of which is 1,206 interstate movements, at $1.00 a car, producing $1,206.00. 4,428 cars were weighed, 85.3 per cent of this number being 3,777 cars weighed moving in interstate commerce, at 25 cents a car, producing $944.25. This would produce a total gross revenue of $217,309.25.

The total operating expenses, taxes and rentals for the fiscal year 1913 amounted to $209,353.76; 79.58 per cent, which would represent the percentage of use of the property in interstate business, is used to determine the amount of the operating expenses, taxes and rentals to be apportioned to interstate business. That amount is $166,603.72.

The total maximum gross revenue for the fiscal year

1913, on interstate business as mentioned above, is $217,309.25. The expenses apportioned against it are $166,603.72, leaving a net gain of $50,705.53, which would be 8.7 per cent on each dollar of the apportioned value, based on 79.58 per cent of the total property value as reflected in our books. That was the first year
Page 233 the Manufacturers' Railway ever had where we approached the maximum of utility more nearly than at any other time.

My similar analysis for the fiscal year 1914, ascertaining all the percentages in the same manner heretofore described, is as follows: The long haul interchange for that year amounts to 50,459 cars, 85.3 per cent of which would be 4,304 cars moving in interstate business, at $4.50 per car, producing $193,684.50 revenue. The short haul interchange, 6,561 cars, 85.3 per cent of that number amounting to 5,597 cars moving in interstate business, at $2.00 a car, producing $11,194.00 revenue. During that year we handled 400 city cars on the Manufacturers' Railway only. The intra-plant movement for the year was 6,051 cars, 19.9 per cent of which would be 1,204 cars moving in interstate business, at $1.00 a car, producing $1,204.00 revenue. The weigh shipments for the period were 3,352 cars, 85.3 per cent of which would amount to 2,859 cars, which at 25 cents a car, would produce a revenue of $714.75.
Page 234 Making a total gross revenue of $206,797.25.

The total operating expenses, taxes and rentals for the fiscal year 1914 amount to $236,096.12; 78.87 per cent of that amount is $186,209.00, and this amount is apportioned to interstate business.

The total maximum gross revenue for the fiscal year, less the operating expenses named, would leave a net gain of $20,588.25, or 3.1 per cent on $665,477.63; the amount representing 78.87 per cent of the average

value of actual property investment for the period of that amount representing the usage of the property in interstate business.

I have similar statements covering the last six months of the calendar year 1914. The business for that six months is grouped as to loaded movements, percentages and costs, as follows: Long haul interchange, 22,075 cars; 85.3 per cent is 18,830 cars moving in interstate business at $4.50 per car, producing $84,735.00. The local interchange cars 3,546; 85.3 per cent of that number would be 3,025 cars, at $2.00 a car, producing $6,050.00; 3,057 intra-plant movements, 19.9 per cent of which would be 608 interstate movements, at $1.00 a car, producing $608.00.

Page 235 There were 502 cars city switching in which the Manufacturers' Railway only participated; and 1,177 cars weighed, 85.3 per cent of this number would represent the cars weighed in interstate business, or 1,004 cars, at 25 cents per car, producing $251.00. These different revenues added would be $91,644.00 gross revenue for the period.

The total operating expenses for the six months amounted to $81,251.73; 77.3 per cent of that amount, or $62,807.58 is apportioned to interstate business. The taxes for the year were $10,033.12, and one-half of this for six months would be $5,016.56. 77.3 per cent of that amount, or $3,877.80, is apportioned to interstate business. The annual rentals for the period amount to $20,374.98; 77.3 per cent of that, or $15,749.85, was apportioned to interstate business. The total maximum gross revenue on interstate business for the six months, less the apportioned operating cost, taxes and accrued rentals, would be a net gain of $9,208.77, or 1.39 per cent on $663,908.72, the amount

representing 77.3 per cent of the average value of the actual property investment for the period.

Page 236 (At this point, the witness Moore was withdrawn in order that another witness might be examined.)

J. D. WATSON, being called on behalf of petitioners, sworn and examined, testified:

Direct Examination by Mr. Haid: My name is J. D. Watson; occupation, Assistant Freight Traffic Manager, St. Louis Southwestern Railway. I have been in the railroad business thirty-four years, with the St. Louis, Iron Mountain & Southern and the Cotton Belt.

I am familiar with the tariffs of the St. Lonis Southwestern Railway, as well as with the tariffs of the Manufacturers' Railway, involved in this proceeding.

Q. It is alleged in the petition that there was filed with the Interstate Commerce Commission on February 5, 1913, effective March 17, 1913, what is known as "St. Louis-East St. Louis Terminal Lines' Switching Tariff No. 1-F, I. C. C. 973," which provides for the assessment and collection by the Manufacturers' Railway Company of a switching charge of $4.50 per car for its service of transporting freight to or from industries located on its line within the City of St.

Page 237 Louis to or from its connection with the St. Louis Transfer Railway Company, and, although it is not admitted in the answer of either the United States or the Interstate Commerce Commission, I believe counsel for both are now willing to admit that that tariff was filed with the Interstate Commerce Commission; if not, they will correct me.

Gov. Folk: Whatever the record shows will be admitted, of course.

Mr. Haid: Q. Will you please read from that tariff,

Mr. Watson, the provision relating to the charge by the Manufacturers' Railway Company for the service referred to?

Mr. Esterline: I understand that this is taken subject to the verification of that tariff as filed with the Interstate Commerce Commission. Of course, I do not want to object to it on the ground that it is not filed until I have time to check. That is the only thing I care about.

Mr. Haid: That is agreeable to me. I assumed you would be willing to agree to that upon the wire of Mr. J. M. Jones, who is the Chief of the Division of Tariffs of the Interstate Commerce Commission, which wire was shown to Governor Folk yesterday.

Gov. Folk: It can be received subject to being checked with the records there.

Mr Haid (to the witness): Just read the tariff item into the record. A. This item appears on page 52 of Leland I. C. C. 973, known as the "St. Louis-East St. Louis Terminal Lines' Switching Tariff 1-F," and is
Page 238 Item No. 390. The provision is as follows:

> "The switching rates provided for herein apply only on traffic the through rates on which are applicable to or from industries, switches, or delivery points located on the Manufacturers' Railway of St. Louis. If the gross revenue is not sufficient to allow of the absorption of the full charges of the Manufacturers' Railway then such portion will be accepted by the Manufacturers' Railway as is represented by the difference between the gross revenue per car and the minimum net revenue required by tariffs as heretofore mentioned."
>
> The provision is that: "On all commodities between all switches, industries and delivery points specified in the list on pages 5 to 29 herein, tak-

ing rate District No. 12, and track connections with the St. Louis, Iron Mountain and Southern Railway, and St. Louis Transfer Railway, the switching rate will be $4.50 per car."

That tariff was effective March 17, 1913, and was issued February 5, 1913. The provision referred to in it concerning the list of stations is, a provision or list of the stations located on the Manufacturers' Railway as specifically referred to in that item, the list being shown on pages 5 to 29 of the tariff, and is the list of the industries in the City of St. Louis, showing their location and the rate district to which they have been assigned. The rate district of the Manufacturers' Railway is Rate District No. 12.

That tariff is not still in effect; it was superseded by I. C. C. 1034, which is St. Louis-East St. Louis Terminal Lines' Switching Tariff 1-G, issued January 28, 1914, effective March 8, 1914.

Page 239 **Mr. Haid:** That, Governor Folk, is the tariff also referred to by Mr. Jones in his telegram, which he says superseded Tariff I. C. C. No. 973 on March 8, 1914.

Mr. Esterline: I understand the preliminary objections made to the evidence offered by the Manufacturers' Railway Company applies with full force and effect to the testimony of this witness and other witnesses who may be offered either by the St. Louis Southwestern Railway Company or the Manufacturers' Railway Company?

Mr. Andrews: As your general objection.

Mr. Esterline: So it is understood that this evidence is going in subject to those general objections, and each of them?

Mr. Andrews: Yes.

Mr. Haid: Yes.

Q. Will you say whether or not there is a provision in that tariff similar to the provision which you have just read from I. C. C. No. 973, and if there is, state whether it is merely similar or whether it is exactly like the provision which you have read into the record? A. It appears to be identical with the provision that I
Page 240 just read into the record from the previous tariff. I have compared the two provisions, and they are the same. Aside from that, the tariff would indicate, or should indicate, if there was a change, and there is no such indication of a change. Under the rules of the Commission, if any change were made in that provision from the provision contained in the previous tariff I. C. C. No. 973, there would be something there to indicate that such a change had been made, either an advance or reduction, and there is no such indication. This item is shown on page 52, Leland's I. C. C. 1034, and is Item No. 390.

Q. Some reference was made this morning at this hearing to the fact that the St. Louis Southwestern Railway Company now has, and for some time has had, on file with the Interstate Commerce Commission, a tariff which provides that the St. Louis Southwestern Railway Company will absorb a charge of $4.50 on lumber moving to industries on the line of the Manufacturers' Railway: Will you state whether or not that is correct? A. That is correct. This tariff is St. Louis Southwestern Railway No. 6233, I. C. C. No. 3246, filed
Page 241 May 15, effective June 20, 1913. This tariff as in this provision has not been suspended by the Interstate Commerce Commission. There have been some provisions suspended under the tariff, but in no case did that refer to absorption of the amount.

Gov. Folk: What is the number of this tariff that has not been suspended?

A. No. 6233, I. C. C. No. 3246, providing rates on lumber from stations on the St. Louis Southwestern and connections to St. Louis. It provides for an absorption not to exceed $5.00 a car.

Mr. Haid: Give the page and tariff number, and read the provision in the record. A. The provision is contained on page 10 of this tariff, and is shown in Item No. 20. It provides that the rates named in this tariff will apply to St. Louis, Missouri, indicating the deliveries to which the rate will apply; and providing in addition thereto the switching absorptions, or the charges of the connecting lines which will be absorbed by the St. Louis Southwestern to affect delivery under this tariff.

Page 242 The provision that provides for the Manufacturers Railway charge to be absorbed by the St. Louis Southwestern Railway is as follows:

> "To industries and public delivery tracks within the switching limits of St. Louis on connecting lines beyond the rails of the lines named in paragraphs A, B and C."

The names of the lines referred to in A, B and C, are the Terminal Railway Association of St. Louis; St. Louis Merchants' Bridge Terminal Railway; and the St. Louis Transfer Railway.

> "We will absorb the actual switching charges of connecting lines as per tariffs on file with the Interstate Commerce Commission, but not to exceed one cent per 100 pounds, except that on shipments weighing less than 50,000 pounds, where the minimum switching charge is $4.50 or $5.00 per car, we will absorb such minimum charge.
>
> "Switching charges of connecting lines in ex-

cess of the absorption provided in paragraph D will be in addition to the St. Louis rates herein published."

That is provided the switching charge is in excess of the authorized absorption in the previous part of that provision. By "authorized absorption" I understand a minimum of $4.50 or $5.00, but aside from that one cent per 100 pounds on actual weight. So that on lumber, if the weight is in excess of 50,000 pounds, under the provisions of that tariff, the Manufacturers Railways' charge is $4.50, and it does not provide for a rate
Page 243 in cents per 100 pounds, but with the Wabash Union Depot Line, for example, it is one cent; if the car had weighed 57,000 pounds you paid $5.70.

So on shipments moving to an industry located on the Wabash and weighing 60,000 pounds, we would pay the Wabash $6.00, but inasmuch as the Manufacturers Railway tariff, which I have referred to, carries a flat charge of $4.50, I would pay them only $4.50, regardless of the weight of the car.

Cross-Examination by Gov. Folk: I couldn't tell you how much we have paid the Manufacturers Railway under that tariff, I don't know. I assume we have been paying it under this tariff, but I would not be in a position to say; I do not handle the payments. That tariff has not been suspended. No order has been made in reference to that tariff.

Page 244 Q. Except as it may be affected by the order in No. 3151 fixing the rates not to exceed the railway rates by more than $2.50?

Mr. Haid: It could not be affected by that order, Governor.

Gov. Folk: That is a question.

The Witness: The order in No. 3151 does not apply to this tariff, as we understand it.

Gov. Folk: Q. The order in No. 3151, you understand, is against the St. Louis Southwestern Railway and all other carriers parties to that case, and fixes a maximum rate of $2.50 above the St. Louis rate?

Mr. Haid: I want to object to that question, for the reason that that involves a construction of the opinion and the last order of the Commission; and this witness is not put on the stand for that purpose, nor has he attempted to construe any of the orders of the Commission.

Gov. Folk: The witness stated the tariff as not suspended. He has given his construction on other points, and I think it well for him to give his construction on this point.

Mr. Haid: I might add to my objection that Docket No. 3151 related to the establishment of joint rates and through routes, and did not in any way relate to joint rates and through routes which were at the time of the institution or pendency of that proceeding.

Page 245 **The Witness:** The only answer I can make to the question is, that the order in No. 3151 was issued long after this tariff was issued and filed. There was no order in No. 3151, of which I am aware, prior to the order which was issued dated July 10, 1914, which does not show the time it was received; it was some time after that.

Gov. Folk: Q. Would you as a traffic man regard the tariff of which you have been speaking as inconsistent with the maximum rates established by the Commission in No. 3151?

Mr. Haid: I want to object to that on the ground that both the United States and the Interstate Commerce Commission in their answers in this proceeding have stated that the Commission has made no order, or ruling, fixing a maximum, but have only stated their opinion on the subject without making any definite order.

Gov. Folk: I will say for the purposes of the record that you are somewhat mistaken about that, Mr. Haid. The answers state that the Commission has not passed upon the question of divisions, but the order in No. 3151 fixing the maximum through rate, leaves the question of divisions for future consideration, should the necessity for such future consideration later arise.

The Witness: I would not. The Commission's rate as fixed in that order is a maximum rate; this is less
Page 246 than the Commission has fixed. This tariff proposes to provide rates to St. Louis and to industries within the City of St. Louis, and the Manufacturers Railway is not singled out. It applies to all the railways in St. Louis, and within the switching district of St. Louis.

It does not further propose to make an absorption of $4.50 a car. It provides for an absorption of switching charges of connecting lines in St. Louis, and those switching charges are provided in Leland's Tariff No. 1034 at present in effect; and that tariff provides a switching charge, including those of the Wabash, the Burlington and various other lines in St. Louis, and also the Manufacturers Railway.

The tariff of which I have been speaking does make a specific allowance to the Manufacturers Railway, but not to the Manufacturers Railway only. In other words, it is not a provision for the Manufacturers Railway alone. The same provision is made for that line

as is made for the Wabash or any other terminal line in St. Louis.

The tariff of which I have been speaking does make an allowance to the Manufacturers Railway of $4.50 a car.

Page 247 Q. As a traffic man, after a through rate has been established, is it not true that the amount received by the Manufacturers Railway would have to be in the shape of divisions, and not in the form of allowances? A. Well, that is largely a question. The through rate in this particular case is published as a rate to St. Louis. The service performed on the traffic by the Manufacturers Railway is that of a terminal line, the same as the Wabash, or the C. B. & Q., or any other line having terminals beyond the rails of the terminal lines who are parties to this tariff. Therefore, we make the same allowance to the Manufacturers Railway, according to their tariff as filed with the Interstate Commerce Commission, as we would to the Wabash according to their tariff on file with the Interstate Commerce Commission. In other words, the through rate is not provided in what may be termed as a joint through rate. It is provided in the form of an allowance to the terminal carrier for the service that that terminal carrier performs.

Q. After you establish a through route and joint rate, whatever is given to the Manufacturers Railway after the establishment of such through routes and joint rates must be in the form of divisions, is not that so? A. If we were to establish such a thing, yes, sir, but it would be impracticable to establish through routes and joint rates with a terminal line which has for its terminus the same identical city. In other

Page 248 words, it would be rather impracticable to provide a through rate for a point on the Manufacturers Rail-

way to another point on the Manufacturers Railway within the same corporate limits, to a connection with another line. There is a very definite distinction between a road that runs from one town to another and a road that begins and ends in the same city.

Mr. Haid: Q. Your position, Mr. Watson, is this: That when you publish a rate to St. Louis, that rate applies to any points within the switching limits of St. Louis, and if, in order to reach an industry within the switching limits of St. Louis you have to use the rails of some other carrier, it is proper for you, if you see fit, to absorb the charges of that carrier for that service: Is that correct? A. That is the way it is provided, and the only way, to my knowledge, that it can be provided.

Gov. Folk: Q. Then there would be no through rates at all? A. Yes, there would be, and to points along the line of the Manufacturers Railway, just the same as there are through rates from any point within the switching limits in St. Louis from which these absorption allowances apply.

ge 249 Q. Do you say then where a railroad begins and ends in the same city there would be no through rates to points along the line of a railroad, but the amounts received by that railroad would be in the shape of allowances, rather than divisions of the through rate? A. I said that there could be no joint through rates, and I meant just what I said. I don't see any difference between the way you have stated it and the way I have stated it.

Q. Then, according to your idea there can be no joint through rates to points along the line of the Manufacturers Railway? A. You mean from interstate points to points along the line?

Q. Yes. A. There are no interstate points on the line of the Manufacturers Railway; it begins and ends in St. Louis, Missouri, you know. From points outside of the State, to points along the line of the Manufacturers Railway, there is a through rate, but there is no joint rate. I mean that there can be no through joint rates.

This tariff of which I have been speaking has not been the subject of any order of the Interstate Commerce Commission, for I don't understand that the order in No. 3151 could affect this tariff charge which was in effect prior to the issuance of that order, and I
Page 250 contend that the Interstate Commerce Commission has made no order in relation to this tariff.

Q. What are you complaining of, then? A. I am not complaining.

Q. What order of the Commission do you ask the Court to set aside in relation to this lumber tariff of which you—

Mr. Haid: The petition shows that very clearly, Governor. That is not a proper question for the witness to answer, and I object to it for that reason.

Gov. Folk: Q. Answer the question if you can. A. As I understand the complaint, it is against the order of the Commission in an entirely different tariff from this one, a tariff that provides for absorption on freight other than lumber. The lumber tariff in this particular case happens to provide for its own absorption. The other tariff provides for all other traffic. Our railroad has no complaint to make in reference to this lumber tariff that I know of.

Page 251 Q. Do you know what you are doing here testifying about it in this proceeding?

Mr. Haid: The only reason he is testifying about that tariff is that Mr. Moore was asked this morning whether any allowance was made to the Manufacturers Railway by the St. Louis Southwestern Railway, and he answered yes, but he was unable to give full information because he was not familiar with the tariff, and it was stated to you at the time by Mr. Moore that a witness would appear to explain the situation. That is all Mr. Watson is here for. He does not know why.

Gov. Folk: Q. You spoke of a tariff filed February 5, 1913, which was superseded by I. C. C. No. 1034? A. That is Leland's I. C. C. No. 1034, yes, sir; the tariff which superseded the one filed February 5, 1913, is not the tariff in controversy in I. & S. No. 355. It is an entirely different tariff. I contend that the tariff which superseded the tariff filed February 5, 1913, is still in effect.

re 252 It provides a great many rates besides those of the Manufacturers Railway. Under this tariff an allowance of $4.50 per car to the Manufacturers Railway is fully authorized. I cannot tell you whether it has actually been paid. All three of those tariffs are in effect as they stand today, i. e., this lumber tariff to points along the lines of the Manufacturers Railway, and the general tariff issued January 28, 1914, which superseded the tariff filed February 5, 1913, and also the tariff known as Supplement No. 5 to Local Tariff No. 6188. Tariff No. 6188 is the number of the tariff which in Supplement No. 5 provides for the absorption of the Manufacturers Railway charge, and refers to this tariff which was issued by Leland. It covers the same items in the Leland tariff, that is, the same items in
re 253 Leland's tariff authorizes the charge of the Manufac-

turers'. There is only one provision that I know of for the charge assessed by the Manufacturers Railway for its service. The provisions for the absorption of that charge are provided in the two tariffs referred to, No. 6188, Supplement No. 5, and No. 6233.

I think Supplement No. 6188 did not supersede tariff filed January 28, 1914. There is nothing that supersedes the tariff filed January 28, 1914. It is still in effect. I think the confusion in your mind is probably due to the fact that you don't appreciate that this tariff, Leland's I. C. C. No. 1034, provides the charge of the Manufacturers Railway. Supplement No. 5 to our tariff No. 6188 provides the authority to absorb that charge. Tariff No. 6233 as to lumber provides the authority to absorb that charge. So it is my idea that the only tariff affected by the order in I. & S. No. 355 is tariff No. 6188, and the other two tariffs are not affected at all by that order, and are not in controversy here, so far as I know.

Page 254 **Cross-Examination by Mr. Esterline:** I am the same J. D. Watson who testified in January, 1912, and September, 1912, before the Interstate Commerce Commission in Manufacturers Railway Co. v. St. Louis, Iron Mountain & Southern, No. 3151. In that case I appeared as an individual, for the Manufacturers Railway. This is the twenty-second year I have been with the St. Louis Southwestern Railway Co. I am now assistant freight traffic manager. It is one of my many duties as such to secure business, to solicit business, for the St. Louis Southwestern Railway Company. It is also a part of my business as an officer of that company to protect and conserve its assets. That is the most substantial part of the duty with which I am charged.

ge 255 Q. Apart from any particular tariff or tariffs about which you have testified in the petition which you have filed in this case, the St. Louis Southwestern Railway Co. alleges that the order of the Commission prohibits it from paying to the Manufacturers Railway Company for its services aforesaid, as great a sum as $4.50 per car, and thereby impliedly commands that the division to be made it shall be less than $4.50 per car, on the ground that the Commission is of opinion that $2.50 per car would be reasonable compensation for such services (that is, the services which the Manufacturers Railway Co. performs); you are not an officer of the Manufacturers Railway Co., are you? A. I am not charged with the conservation of the assets of that company, and have absolutely nothing to do in that line in connection with that company.

Q. Why is it, Mr. Watson, that you allege that the Interstate Commerce Commission found that you may secure this business for $2.50 per car, and notwith-
ge 256 standing that you insist on paying $4.50 per car if you are allowed to do it.

Mr. Haid: I want to enter a formal objection there. That is not proper cross-examination, for the reason that counsel is getting on matters not touched upon in the regular examination.

The Witness: The desire of the St. Louis Southwestern Railway is to pay the amount provided by the Manufacturers Railway Co. in their tariff for the services which they perform. Each line elects to fix its rates. We feel and always have felt that the charge of the Manufacturers Railway Co. at $4.50 per car was too small as compared with what we pay now in St. Louis for similar service, and, in some cases, for less service.

I am "so interested" in the Manufacturers Railway because of the fact that it is a terminal in St. Louis from which we expect to receive some traffic. It is not entirely because of the traffic which we secure. It is also for the reason that we feel that we should pay their charge without question, the same as we would pay the charge of the Wabash without question.

Page 257 Q. You feel that the St. Louis Southwestern Railway is in need of money, I take it? A. Yes, they all are at present, including the Manufacturers Railway. Yes, the St. Louis Southwestern is in need of money.

Q. And yet you want to make this allowance of $4.50 to the Manufacturers, instead of taking advantage of the $2.50 suggested by the Commission, and thereby give up that much money for the purpose of securing the business? A. Well, the Commission suggested $2.50—the Manufacturers Railway did not agree to accept $2.50.

I do not know that we are siding with the Manufacturers Railway in making ourselves a complainant in this suit against the order of the Interstate Commerce Commission which suggested $2.50. We simply desire to provide in a proper manner for the payment of the charges which our tariff specifically authorizes. We are supposed to have gone into all of the things which you have just referred to before we put them in our tariff, and we decided when we put them into the tariff that it was a proper allowance to make for the service that was performed.

Re-Cross-Examination by Gov. Folk: Q. You spoke of the fact that different lines fix their own rates.

Page 258 Ordinarily a railroad fixing a rate to a point along the line of the Cotton Belt, you would not absorb the charge of that railroad, would you? A. Well, in the first place, in actual practice that would be impracti-

cable. There is no line that could fix a charge to a point along the line of the St. Louis Southwestern without our consent, and we would have to put that consent in writing and file it with the Commission in proper form. Possibly I do not understand your question.

Q. You spoke of the fact that railroads fix their own rates in the first instance, and you would argue from that that the Manufacturers Railway should have the right to fix its own rates, but you do not absorb the rates of an ordinary railroad, do you? A. Well, I can probably cite you a couple of thousand instances here in St. Louis where that condition is absolutely the same. Yes, I am talking of the terminal railroads, and just the same kind of railroad as——

Q. I am speaking of a regular railroad? A. The Manufacturers is supposed to be a regular railroad—at least the Commission so found.

I have indicated in my testimony that a railroad beginning and ending in the same city is in a different situation than one running from one town to another, and for this reason only: that one is a terminal railroad and the other is a railroad; that is the only difference.
ge 259 Leave the "terminal" off, and you have the same condition.

Q. You do not ordinarily absorb the charge, for instance, of the Illinois Central? A. Well, so far as that is concerned, we absorb a part of the charge of the Illinois Central on almost every bit of traffic we handle in connection with that line.

In other words, the through rates are, in a large majority of instances, less than a combination of the locals. Therefore the delivering carrier will accept less than its local rates from the junction point, if that is what you have reference to; but that is an entirely dif-

ferent condition. Yes, I do know, not only of a single instance where the Cotton Belt absorbs the rate of a regular transportation railroad, but a great many thousand. Every industry on the Wabash Union Depot line in the City of St. Louis——

Q. You are going back to terminal roads again? A. Yes, sir.

Q. I am speaking of a transportation railroad such as the Illinois Central? A. The Wabash is the same as the Illinois Central. If you take the Wabash outside of the City of St. Louis, it would be joint through rates, and would be an entirely different problem than the one we have before us here.

Q. So it is one thing when it is a rate from points along the line of the Cotton Belt to points along the line of the Illinois Central, and quite another thing
Page 260 from points along the line of the Cotton Belt to points along the line of a terminal railroad, such as the Manufacturers Railway? A. Well, points along the Manufacturers would have to be industries. They could not be points in the common acceptation of the term. Points are ordinarily considered——

Q. You have confused in your mind the idea of towns. I used the expression "points" in the sense of where you stop to deliver the car. Whether it be an industry or whether it be a station, or whatever it may be? A. Well, I cannot differentiate for you to save my life. I have tried several times. There is absolutely a difference. There is no similarity in conditions at all that I know of, absolutely not. I do not know of a single instance in all my experience (and I have been at it a long time) where we provide a joint through rate from a town reached by our rails in connection with another line. In each and every case of

that character it is by the process of an absorption tariff.

Q. Suppose another terminal common carrier should be formed and hitch itself onto the Manufacturers Railway; would you also make allowances to that terminal? A. That is an extremely difficult question to answer. It is altogether according to conditions. We do not meet competition, you know, until we have to.

ge 261 Q. You can readily see that by that process your entire rate would be absorbed, eventually? A. No; I readily know that it would not be absorbed, because there is a place where we can discontinue meeting competition, you know.

Q. If you allow $4.50 per car to the Manufacturers Railway, then $4.50 a car to another terminal car line beyond that, and $4.50 to still another one beyond that, all must come out of the through rate, or your rate, rather? A. No, sir; it would have to come out of the through rate, provided the through rate includes those charges. We have that condition right here in St. Louis, and we do not go to any great extent, as is very clearly indicated in this tariff. In this particular tariff, you observe, we put a stop to the allowance or absorption, and specify that we will absorb not to exceed one cent per hundred pounds in the case of lumber. That is what that is for, to stop just such a condition as you refer to; but bear this in mind, the charge that we are allowing to the Manufacturers Railway is less than the charge we allow to other industrial lines in St. Louis, if you separate the terminal property from the line haul property. Take the Wabash, for example. If you are going to call the Wabash Union Depot Line, or the Wabash terminals in St. Louis a separate and distinct proposition from every line haul, then we are doing in the case of the Wabash just as we

Page 262 are doing in the case of the Manufacturers. You can take that upon the St. Louis, Iron Mountain & Southern and the——

Q. Take a point on the line of the Illinois Central, for instance. Freight shipped from the station along the line of the Cotton Belt to a point on the line of the Illinois Central, there would be an additional charge by reason of the fact that it goes over the Illinois Central, would there not? A. If you select a similar condition to that which applies here, my answer will be no. If you select a condition different from that which is here, I would say yes. Now, I will differentiate the two for you, and try to get them straightened out; in the case of Memphis, we will say, where the Illinois Central have a very extensive terminal and perform services very similar to the Manufacturers, our tariffs into Memphis do not show the Illinois Central as a party. They are not joint through tariffs to the points, as you call them, on the Illinois Central, or industries on the Illinois Central tracks, but the tariff applies to Memphis, and in connection with that tariff is what we call an absorption tariff, which provides for delivery on the Illinois Central tracks within the City of Memphis.

The same condition is true at Cairo where we have a connection with the Illinois Central, the same as we
Page 263 have with the Manufacturers here. If a shipment is destined to a town outside of Memphis, twenty-five miles, we will say, that condition would be entirely different, because the through rate would be either the combined locals, or it would be a through rate properly adjusted as between two lines under a fixed basis of division. Does that make it clear to you?

I could not answer in the affirmative your question whether there is a difference between the tariffs and the through rates from points along the line of the

Cotton Belt and points along the line of the Illinois Central (other than terminal facility points) and rates to points along the line of the Manufacturers Railway treated as a terminal, because that it not true. There is no difference at all. The conditions are exactly the same where the deliveries are related one to the other. In other words, if it is a terminal delivery, the condition of the Illinois Central would be exactly the same as our condition here with the Manufacturers Railway.

If freight were shipped over the Cotton Belt, to be turned over to the Rock Island, destined to a station on the Rock Island, whether the Rock Island would get its charge in addition to the Cotton Belt charge is altogether according to where the station is located. If located on a junction point of the Rock Island, no. If located beyond a junction point on the Rock Island, yes. In other words, you cannot specify separate points within a terminal. It would be impracticable
Page 264 to have your through rates less than the rate to the point along our line where we join with the Rock Island. You cannot have a less rate. You have to have the same or a higher rate.

Q. In other words, when you take ordinary transportation railroads, the further the freight goes there is an additional charge for the distance, or, to use a concrete illustration, freight shipped from St. Louis to Evansville carries a certain rate. If from Evansville it goes to Nashville, there is an additional rate. If from Nashville it goes to Atlanta over another railroad there is still a further addition to the rate, and each road gets its proportion of the rate, and the road from Nashville to Atlanta would get an additional charge which it would receive in the way of divisions of the through rate? A. That may be very clear to you, but it is not very clear to me. There are quite a number of

different conditions that would be involved. The rate to Nashville and Atlanta might be identical because of the fact that Nashville might be reached by one line and Atlanta by another line, and the process might be to meet the competition as between the two, though the rate to Nashville and Atlanta might be identical. Therefore, it is not always possible to add an additional charge for the additional line. In the case of ordinary transportation, it is not impossible to have your charges eaten up by the divisions allowed the
Page 265 other lines, but it is entirely impractical. I do not know any case where it would be done, or would effect that result.

As to whether in the instance of a terminal road like the Manufacturers, I can conceive of additional terminal roads being constructed beyond the line of the present Manufacturers, and if we make allowances to that terminal as we make allowances to the Manufacturers, I can not conceive of a point being reached at which we would have no returns for the service performed by the Cotton Belt. I answer that I could not conceive of such a point, because it would not be my judgment to absorb the charges beyond a fixed limit which, as I said, is specified in the tariff.

My recollection is that the Manufacturers' Railway for its local service has a franchise charge as low as $2.00. An ordinance of the city prohibits it, for a certain consideration, from charging more than $2.00. That is, $2.00 a car plus the consideration, is what the
Page 266 return would be to the Manufacturers Railway, the consideration of permitting the Manufacturers Railway to use certain streets, alleys, etc. That is a valuable consideration.

I testified in this case before the Commission for the

Manufacturers Railway as to certain conditions only, as to charges, etc.

Re-Cross-Examination by Mr. Esterline: Q. In order to make clear in my mind your position in this case: you are interested solely in the Manufacturers Railway in its getting a charge, as you say, for the service which it renders? A. My interest in this case is to tell to the Commission or to the Court, what these tariffs provide. That is my interest in this particular case at this time. Our railroad is a party to this petition to set aside this order of the Interstate Commerce Commission. I am not claiming confiscation against the St. Louis Southwestern Railway Company.

Page 267 Q. You say it is not for the purpose of getting business: did I understand you to say that? A. I did not, but I will say that now.

Mr. Esterline: Q. You will now. Then you are willing to appear here for the Manufacturers Railway and protect its property at the expense of your own treasury; that is correct, is it not?

Mr. Haid: I want to say that at the time this suit was brought Mr. Watson was not in the employ of the St. Louis Southwestern Railway Company; this suit was not brought at his instance, nor upon his advice. For a period of six months he was out of the employ of the St. Louis Southwestern Railway, and had nothing to do with the institution of this suit. He is brought here to prove the provisions of those tariffs, as I stated in the first place, and for that purpose only.

The Witness: A. I don't understand that this suit would protect the Manufacturers Railway at the expense of our property. You are correct in saying that if the result of the litigation was to permit the pay-

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ment of $4.50 a car, as against $2.50 suggested by the Commission, that would be allowing $2.00 more to
Page 268 the Manufacturers Railway than we would be obliged to pay on what the Commission has done, but at the same time our tariff which we filed with the Commission agreed to allow the Manufacturers Railway $4.50 per car. Had we not been willing to allow $4.50 per car, that never would have been published. We were willing to allow it because we felt it was necessary to meet our competition. It was to get the business, so far as meeting competition was concerned. You must bear in mind that the competition with the Manufacturers Railway lies in another railway, not in the Manufacturers Railway.

Re-Direct-Examination by Mr. Haid: It is true by my last answer I meant that unless we had arrangements whereby we might secure business from the Southern part of the City of St. Louis through the Manufacturers Railway, all of the business in that part of the city would move over the Iron Mountain, and not only would it all move over the Iron Mountain, but it would be a very difficult proposition for us to secure it from points in competition with the Iron Mountain, and we practically parallel that line throughout the States of Missouri, Arkansas and to the Texas State Line.

Page 269 It is true that about a year prior to the institution of this suit the Cotton Belt had in the Federal Court in Arkansas the question of what is a proper switching charge, and in that case other officials of the Cotton Belt and I, had occasion to investigate to determine what a proper switching charge would be.

Q. And in that case did you or did you not ascertain that, without taking into consideration any overhead

or other fixed charges, any taxes, any interest on investment, in fact, anything but the actual cost of the haul, it would cost the Cotton Belt Railroad $3.26 per car to perform a switching of from two to three miles?

Mr. Esterline: That is objected to. It is a matter of record if it has appeared in the United States District Court in Arkansas; and, second, it does not appear that what occurred there has any bearing on the present situation.

A. That is true, and it was very conclusively shown by the parties who prepared those figures that the cost of the service (meaning the simple performance of the switch engine in the yard) was $3.26 per car.

Q. Will you say whether you had those figures in mind when you determined that an allowance of $4.50 to the Manufacturers Railway in the City of St. Louis, where the terminals are very much more expensive, was a reasonable allowance?

Mr. Esterline: That is objected to.

The Witness: A. We not only had that in mind, but we had in mind further that we allow for less service
Page 270 within the City of St. Louis a charge of $5.00 a car. We also had in mind——

Gov. Folk: Q. You mean the Terminal Association? A. No, I mean the Wabash Railroad Union Depot Line in St. Louis.

Mr. Haid: Q. Would you consider it discrimination on the part of the St. Louis Southwestern Railway Company if it refused to absorb an allowance of $4.50 to the Manufacturers Railway in serving shippers located on the line of the Manufacturers Railway, while at the same time absorbing a greater allowance in de-

livering shipments to shippers on the line of the Wabash Railroad in the City of St. Louis?

Gov. Folk: That is objected to, on the ground that it is an effort to have the witness usurp the function of the Interstate Commerce Commission and of the United States District Court.

Mr. Haid: The reason I asked it is that you have been asking——

The Witness: A. In my opinion, it would be pure discrimination; in other words, there wouldn't be any question about it.

Mr. Haid: Q. Do you think that the Wabash Railroad Company, in accepting from the St. Louis Southwestern Railway at St. Louis a shipment destined to a point or an industry located on its line within the switching limits of St. Louis, makes the Wabash Rail-
Page 271 road a terminal line, for instance? A. As to that traffic it is a terminal line, yes.

Q. Governor Folk was asking you awhile ago with reference to the distinction between the service rendered by the Manufacturers Railway in St. Louis and the service which might be rendered by the Illinois Central Railroad in transporting freight from one of its junctions with the St. Louis Southwestern Railroad to a station located on its line: Let me ask you whether the distinction is this: that where a shipment moves from any recognized station on the line of the St. Louis Southwestern Railway to a recognized station on the line of any other carrier, either the through rate (if one exists), or a combination of locals, is charged; while in a case such as in the City of St. Louis, the City of Cairo, the City of Memphis, or any large city, where the terminals, or rather the switching limits, cover a vast

area, it is always the practice, whether the ultimate delivery is made by a switching carrier, or by a line carrier, for the initial carrier to absorb the necessary switching charge to reach the industry to which the shipment is going? A. As to competitive traffic, yes, sir. I am afraid possibly there has been some misunderstanding in connection with this proposition, in that it is not understood that the allowance to the Manufacturers Railway is only on competitive carload freight. In other words, we do not make an allowance on traffic going to local points, the allowance being made to meet the competition.

Page 272 **Gov. Folk:** Q. What proportion of your traffic would that consist of? A. That would consist of a very large proportion of our traffic, because competitive traffic would be not only traffic competitive to our own line, but to points beyond our own line. It would be considerably more than fifty per cent. On non-competitive traffic we make no allowances, and there is no provision for it.

Q. What do you say about that being discrimination? A. I feel that it is not discrimination. The Commission seems to agree with me.

Mr. Haid: The Supreme Court has passed on that.

Q. Is it customary, Mr. Watson, for a terminal line, or a road line which acts as a terminal line, such as the Wabash in the City of St. Louis, to concur in tariffs so as to make the rates joint through rates, or is it customary for the originating carrier to publish a rate to stations, and to provide that it will or will not absorb the switching charge of the connecting line? A. I do not know of any case where the line concurs in a tariff for the sole purpose of participating to the extent of a

switching service from an industry to the line publishing the tariff.

Re-Cross-Examination by Gov. Folk: Q. As we un-
Page 273 derstand you, you disagree with and disapprove of the findings of the Interstate Commerce Commission with respect to the allowances that should be made to the Manufacturers Railway? A. No, I don't think I do. I don't think the Commission made up its mind what they want to do with the Manufacturers, according to the way I read the opinion.

Q. You think the order of the Commission in this case may be followed and yet your position be sound? A. No, the order in this case, as I understand it, is that the Commission are going to determine now what the allowance to the Manufacturers Railway should be. Their opinion is that it ought to be a certain figure; but the soundness of that opinion, it seems to me, they are not satisfied with themselves. I thought you were speaking of case I. C. C. No. 3151. I do not regard this case as a proceeding to have the allowance fixed. As I understand this proceeding, it is for the purpose of deciding what shall be done with Supplement 5 to our Tariff No. 6168, as one of the principal things to be done in this case. I believe the reasonableness of an allowance to the Manufacturers Railway will have to be determined before we can get through with the proposition in this case.

Page 274 I can tell you, as an expert, the distinction between an allowance and a division. The word "allowance" is pretty thoroughly fixed in the minds of those who have to deal with tariffs. We know just what that means. It is coupled up with the word "absorption" in our minds. "Division" means just what it is, nothing more nor less, a division of the rate. A "divi-

sion" is a proportion of the through rate, either arbitrary or fixed by percentage. An "allowance" is an absorption from the rate of the terminal.

The way our tariff at present reads, it provides for an allowance to the Manufacturers Railway. In other words, we absorb the charge of the Manufacturers Railway, and they fix the charge. I prepared those tariffs,
Page 275 except Supplement 5 to No. 6188. I was not in the service of the Company at the time that was prepared. As I understand those tariffs, they distinctly provide for the amount of money that will be paid to the Manufacturers Railway by the St. Louis Southwestern on the traffic referred to in the tariffs. You can call it an allowance, a division, or whatever you choose, it is money either way. I have just explained, and have often explained, the distinction between allowance and division. I consider the amounts provided by our tariff to the Manufacturers Railway allowances for the service they perform.

As to whether I know that twelve out of fourteen trunk lines entering St. Louis have filed tariffs to points along the line of the Manufacturers Railway at the St. Louis rate—they have provided for that in various forms, but I have not checked them all out. A great many of them are in just exactly the same form as ours. In fact, it is the simplest way to provide the rate. It is considered by tariff men as the simplest way to provide a rate for a condition such as is covered by the Manufacturers Railway service.

Page 276 **Re-Cross-Examination by Mr. Esterline:** What I said about the allowance to the Wabash terminals was testified to before the Interstate Commerce Commission in this proceeding, and can be determined from these tariffs to which I gave you reference. That testi-

mony concerning the allowance to the terminal was before the Commission when the Commission passed on this case. I am satisfied it was in the record. Also what allowances should be made to the Manufacturers Railway. I testified to that just the same as I did here, and that I did not consider $4.50 enough. If I was performing the service, it would cost the carriers more money.

Page 277 **G. F. Moore: Direct Examination resumed by Mr. Andrews:** Mr. Kendrick has furnished me with just one figure showing his valuation of this railroad property. It is $2,215,353.78; which he stated would be the amount he would enter our capital account, according to his findings of the present worth of the property on January 1, 1915. This figure covers all real estate owned by the Railway Company, as well as the permanent improvements thereon, and the railway facilities owned by the road on leased and franchise right-of-way, as of January 1, 1915.

Since it covers certain real estate acquired by the Railway (previously held under leases), it will reduce the rentals which have heretofore accrued on certain property operated over but not then owned by the Company. In other words, in the computations which I
Page 278 have made on certain periods, I have decreased the rentals $28,000 a year; which analyzed, means $4,000 a year paid to the City of St. Louis, and $24,000 a year paid to the Anheuser-Busch Brewing Association. There are some other minor items of rental which I regarded as negligible.

I wanted to take Mr. Kendrick's basis of present worth value and reduce it to a present worth value as of June 30, 1914, and June 30, 1913. In order to do that I deducted such an amount as went into our property

account between June 30, 1914, and December 31, 1914, which was $17,133.17, and that would leave me $2,198,-220.61 as the present worth value of the property June 30, 1914.

Then reducing that to the present worth value as of
Page 279 June 30, 1913, I deducted further an amount of $111,-745.63, covering the addition to our property account for the fiscal year ended June 30, 1914, and then I found the present worth value on Mr. Kendricks appraised present worth value, equaling $2,086,474.98 as of June 30, 1913.

Then I adjusted the rentals by eliminating accruals on all property reported by Mr. Kendrick as owned, and recast my computation on that new basis.

Q. Give us that computation for the year 1913. A. The business for the fiscal year 1913 was reduced to loaded car movements, percentages, and cost, as follows: Long haul interchange, 53,461 cars, 85.3 per cent of which would be 45,602 cars moving in interchange interstate commerce, at $4.50 per car, would produce $205,209; short haul interchange, 5,832 cars, 85.3 per cent of which would be 4,975 cars, at $2.00 a car, producing $9,950; 34 Manufacturers Railway only city movements; 6,063 intra-plant movements, 19.9 per cent of which, or 1,206 cars, at $1.00 per car, producing $1,206; weighing shipments, 4,428 cars, 85.3 per cent of which, or 3,777 cars, at 25 cents a car, producing $944.25.

The total operating expenses, taxes and rentals for the fiscal year 1913, amount to $195,628.80; 79.58 per cent of that amount, or $155,681.39, is apportioned to interstate commerce business.

The total maximum gross revenue for the fiscal year, 1913, on interstate business, as computed above,

Page 280 amounts to $217,309.25. The expenses now apportioned against it amount to $155,681.39, and the net gain to $61,627.86, or 3.71 per cent on $1,660,416.80, the amount representing 79.58 per cent of the at that time value as appraised, as actual property investment for the period.

I have prepared statistics for the fiscal year, 1914, making the necessary changes in the financial account to meet the conditions as they exist under the valuation of Mr. Kendrick as follows: I found the property cost to be $17,133.17 less than as of December 31, 1914. The value as of June 30, 1914, would be $2,198,220.61, and the rental paid would be reduced to $28,000 per annum. Giving these two changes their proper consideration, I find the total operating expenses, taxes and rentals, for the fiscal year, 1914, amount to $221,308.84. Of that amount, 78.87 per cent or $174,546.28, is apportioned to interstate business.

The total maximum gross revenue for the fiscal year, 1914, on interstate business amounts to $206,797.25. The expenses apportioned against it amount to $174,-
Page 281 546.28; and the net gain, $32,250.97, or 1.86 per cent on $1,733,736.59, the amount representing 78.87 per cent of the at that time value as appraised, of actual property investment for the period.

In order to complete the statistics up to the time of the valuation, I wish to present the following statement covering the last six months of the calendar year, 1914, based upon Mr. Kendrick's valuation: The business for the last six months of the calendar year, 1914, is reduced to loaded car movements, percentages and cost as follows: Long haul interchange: Number of cars handled, 22,075; 85.3 per cent of which, or 18,830 cars, at $4.50 per car, would produce $84,735. Local

interchange: Number of cars handled, 3,546; 85.3 per cent of which, or 3,025 cars, at $2.00 per car, produce $6,050. Intra-plant movements, 3,057 cars; 19.9 per cent of which, or 608 cars, at $1.00 per car, would produce $608. City movements, Manufacturers Railway only, 502 cars. Weighing movements, 1,177 cars; 85.3 per cent of which, or 1,004 cars, at 25 cents a car, would produce $251. This revenue totaled $91,644.

The total operating expenses for those six months amounted to $81,251.73. 77.3 per cent of that amount, which represents the proportion of the property used
Page 282 in interstate commerce, or $62,807.58, is apportioned to interstate business.

The taxes, divided on the same basis of percentage, would be $3,877.80, and the rentals for the period would now amount to $14,077; of which amount, 77.3 per cent, or $11,822, was apportioned to interstate business.

The total maximum gross revenue for the six months on interstate business, less the total expenses apportioned against it, would leave a net gain of $13,136.62, or .77 of one per cent on $1,702,468.47, the amount representing 77.3 per cent of the present worth value as appraised, of the actual property investment for the period.

I now have a copy with me of the concurrences referred to this morning, which were filed after the opinion of the Interstate Commerce Commission in Case No. 3151. The concurrences which were sent out were not all alike in form. There were three forms, FX-1, FX-4 and FX-8. These are special forms and contain
Page 283 some added wording. All three, in some form or other, had to do with the tariffs that are now published. Form FX-1, No. 10, is commonly known as the power of attorney form. We have used the customary blank

with this one addition, inserting "Contain St. Louis rates no greater than such rates contemporaneously in effect." Instead of leaving it just an open form, we have limited it that much.

Gov. Folk: Q. I do not understand that you are raising a question as to having concurred in those tariffs, do you? A. I don't know what question is raised, Governor. I am just trying to answer any question that you or the attorneys may ask me. I am not raising any question about it. So far as I know, every tariff that has been filed has been filed in due conformity with concurrences that we have issued. There is no controversy in my mind on that point.

Page 284 The second form of concurrence which we have filed, FX-4, is a concurrence form that is filed with individual carriers, when you want to limit the power of the individual carriers to the publication of a certain specific rate. I would prefer to read the whole concurrence of that form into the record.

"To the Interstate Commerce Commission,
Washington, D. C.

This is to certify that the Manufacturers Railway assents to and concurs in the publication and filing of any freight rate schedule or supplement thereto which publishes a rate or rates no greater than the St. Louis rate contemporaneously in effect which.....
Railroad, or its agent, may make and file and in which this Company is shown as a participating carrier and hereby makes itself a party to it and bound thereby insofar as such schedule contains rates applying from, or by way of points, or to or by way of points on the.....
Railroad to points on or beyond or from points on or beyond the lines of the Manufacturers Railway Company, until this authority is revoked by formal and official notice of revocation placed in the

hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given."

I have read one concurrence of a number that have been filed on Form FX-4.

The third form is FX-8, designed to be issued to tariff publishing agents, such as F. A. Leland, who published this blue tariff that we have had in evidence to-
Page 285 day. The only difference between the one we have used and the open form is that we have inserted "that we agree," etc., in the schedule of rates "no greater than St. Louis rates contemporaneously in effect by way of other routes between points on our road, by way of either the Manufacturers Railway Company or the within named carriers of traffic originating on our road by way of the Manufacturers Railway Company" or the different named companies. Otherwise, the concurrences are what we call our open blank form.

The net cost to the Manufacturers Railway of the strip which is east of the United States Arsenal Quartermaster's Department, referred to in Mr. Kendrick's Account No. 2 (Exhibit No. 2) under the subject of "Land for Transportation Purposes, deeded land," under the item "Arsenal Yard: quantity, 35,920; cost of reproduction, new, $32,000"; was approximately $32,-000.

Cross-Examination by Mr. Esterline: I am the same George F. Moore who was President of the Manufacturers Railway, and who testified as a witness at the several hearings before the Interstate Commerce Commission in the case of the Manufacturers Railway Company, *et al.*, vs. The St. Louis, Iron Mountain & Southern Railway, *et al.*, I. C. C. No. 3151. I am now President of the Manufacturers Railway.

Page 286 Your understanding is not correct that I said this

morning that the form of testimony given by me today differs somewhat from the form in which I testified on the same subjects before the Commission, in that I have today given different groupings of the properties and figures.

In answer to a question asked by Mr. Andrews whether or not the financial figures I have used in these computations had appeared in the records of Case No. 3151, I answered, or intended to answer, that those figures did appear in the testimony in Case No. 3151, but I had segregated and grouped the amounts differently from what they were given in that testimony; using the same amounts, but using proportionate parts of them for periods, rather than considering them as the exhibits shown them in Case No. 3151.

If I had desired to do so, or if I had been asked to do so, I could have presented them to the Commission in the same groupings, or in the same manner or form,
Page 287 as I have presented them here today. I was not asked to do so at that time or at any of those hearings. I could have given the same or similar testimony before the Commission had I been asked to do it on anything that I have offered today, insofar as my completed records at that time would allow me to obtain the data.

We never had the data which Mr. Kendrick supplied until he supplied it, so that could not have been brought into the other case. The property was in existence, and the physical matter covered by those statements, such as buildings and improvements, were all in existence, and it could have been gotten in that form had we desired to do so.

Q. You worked with Mr. Kendrick and were in communication and conference with him during the time that he prepared his data and during the time that you prepared yours. As I understand it, you worked some-

what together along similar lines, in a general way,
Page 288 I do not ask for a specific way? A. No, I do not wish to leave such an impression as that, if I have created it. My conferences with Mr. Kendrick were exceedingly brief. He knew nothing about what I was working on, and until the Saturday preceding the Monday that this case was set, I knew absolutely nothing about his figures, and up to that time I had only the knowledge that I secured from marking one of the maps with my engineer to show the leased property upon which we had tracks, the tracks of the Anheuser-Busch Brewing Association, the franchise property upon which we have tracks, and the property owned, upon which we have tracks, and I was consulted with but seldom as to any of the work which he was doing.

All of the figures which I have given about the movement of cars in interstate commerce and the revenues derived from those cars could have been estimated and given to the Interstate Commerce Commission in the same manner in which I have given them today, considering the time limit, if I had been asked to do
Page 289 so. I would not have undertaken to estimate the business for the future. But up to the time when I had records upon which to work, the information could have been given at any time.

I have never been engaged in the real estate business as an operator. I believe I have bought more real estate in the past four years than any other one man in St. Louis, but as a buyer, not as a real estate operator. I rather think that prior to my connection with the Manufacturers Railway I had experience enabling me to judge the value of railroad property. I engaged in the construction of railroad property. I have worked through the formation of large city terminals, namely, the Chicago & Western Indiana, and have been in the

railroad business a great many years, always trying to learn from things that came under my observation. I think I have had exceptional opportunities of judging of the value of railroad properties. You are not correct in understanding that my experience had been confined largely to railroad work in other lines than as estimating values, or that I had been identified more with accounting. Excluding my service in St. Louis, I have been more identified with the operating department.

Page 290 I did not testify that 1,750 feet of tracks colored in red are not open to the public and are wholly undesirable for public use. These 1,750 feet of tracks colored in red are tracks that are not of a great deal of benefit to the public, and in fact of but little use to the public. I will put it that strong. Some of the 1,750 feet of those tracks are in the glass house under a roof and in a building. That is marked in red at the intersection of Dorcas Street with the Iron Mountain tracks. Following up the Dorcas Street line, there is a track in
Page 291 a building in Block 1,411 inside of the building line. The ice house located just east of Second Street and north of Arsenal Street, is a parallel track in an open shed. That is used to a negligible extent by ice dealers who peddle ice from cars.

On this map, in what we call our First Street yard east of Second Street and close to a circle where you see the figures "168" is about 100 feet of track in a building that is not used for any purpose, and, so far as I know, is an abandoned track. Just north of that is about 200 feet of track under a shed, depressed for the purpose of unloading coal into conveyors for the stoker of the Anheuser-Busch Brewing Association. At a point just north of that there is another strip of track, the circle nearer the western extremity of which just

east of Second Street, is marked "10." That is a shedded track, I would say. In Ninth Street there is about 200 feet of track in the clear, used to set coal for the stoker of the power station of the Anheuser-Busch Brewing Association, in the same yard from the three parallel tracks in the building open at one end; that is called the freight depot, but so far as I know, nothing but case beer is ever loaded in cars in that freight depot. That, I believe, finishes the tracks marked in red.

Page 292 The St. Louis Refrigerator Car Co. have within their shops about 1,600 feet, the use of which I tried to explain this morning.

I do not consider the large fan-like yard leading off of Second Street as being closed. Some of them are under sheds, but about one-third are used for the purpose of condensing and arranging deliveries to connections for movements in interstate and intra-state commerce, without regard to who the shipper may be. The yard is amply open and well paved, so I do not consider that as an enclosed track; and with driveways throughout.

My test of tracks not used by the public to any extent at all, are those which are within or covered by buildings, or so constructed as to be practically inaccessible to any one other than the Anheuser-Busch Brewing Association. Let me explain that I think the Anheuser-Busch Brewing Association is just as much the public as the Governor would be, or any one in this room would be, but in order to differentiate——

Q. Then those tracks would likewise be in the public's use, would they not? A. I would not call that in the public use.

Page 293 Q. The fact that they are used by the Anheuser-Busch Brewing Association, regardless of whether they are in the building or outside of the building, you

would say that was a use of the track by the public? A. I would say that was a use of the track by part of the public.

Q. Now, then, when you get outside of the buildings, you would say that all of these tracks, whether used by the Anheuser-Busch Brewing Association exclusively, or by others, were tracks for the public use? A. You are creating a condition by your question that does not exist. There are no other tracks that are used exclusively by any one representative of the public. It is true that the Anheuser-Busch Brewing Association does use at times a large percentage of the trackage in the middle zone. As to the brewery yard, they have a right to use it just the same as anybody else would have the right to use it as to any track, whether in the building or outside of the building, just as long as there is any utility left up to its full maximum of utility.

Page 294 Q. I was out there yesterday morning, and in this First Street yard I found a drag of their yards up and down their tracks until the yards were full. You know the condition that exists there, and probably know as it existed yesterday morning. A. At several times of the day they are quite full of cars, and at other times they are quite empty.

Q. Those cars consist of the Anheuser-Busch Brewing Association's cars; that is to say, they are the white cars labeled "Budweiser Beer," with the eagle in the triangle on the side, and those are the Anheuser-Busch Brewing Association's cars, or cars supplied by the St. Louis Refrigerator Car Co. Is not that correct? A. Those cars are supplied by the St. Louis Refrigerator Car Co., and are used by any customers of the Manufacturers Railway that want to use them; and when you saw them in the yard (and that, by the way, is a

make-up or break-up yard, and not a delivery yard in any sense of the word), it does not indicate that they
Page 295 are in the service of the Anheuser-Busch Brewing Association exclusively, but only to such a percentage as the business of the Anheuser-Busch Brewing Association is a percentage of the total amount of business handled by the Manufacturers Railway for which the Railway has been asked to furnish cars. They are the only cars that we have the privilege of furnishing, except such cars as we own ourselves. It is not a fact that the big white cars standing there in one string after another are cars of the Anheuser-Busch Brewing Association in which they expect to ship out their beer, because I mean to say that those cars go indiscriminately to other people.

I presume I have the authority to use cars in the whole yard for any business that might develop, that would call for their use; at least, I have taken that authority.

Q. Is there any other industry in St. Louis disconnected with the Anheuser-Busch Brewing Association or its affiliated interests that could fill that yard with
Page 296 cars and maintain them there indefinitely? A. The Anheuser-Busch Brewing Association does not fill that yard with cars; neither does any other industry fill our yard with cars. We handle the St. Loius Refrigerator Car Co.'s equipment as the home base of that equipment. We pay nothing for the use of that equipment, nor the yard space that we give it. We handle it on the same basis that we handle the Refrigerator Transit Company's cars, a Gould line proposition. They let us have their refrigerator cars without a charge of per diem or mileage, for any business that we can give to those cars, and if you will look real close you will probably find some of them in the yard also. Whenever I

cannot get the one class of cars I try to get the other class of cars. For the yarding I give those cars, I am allowed to offer them and do offer them, and do use them in the business of other people than the Anheuser-Busch Brewing Association whenever and to what points I desire to ship them, and they come back home to the Manufacturers Railway, as indicated in the Equipment Register, of which they are a part.

The Ice House is located at the end of those spurs in what is marked as the First Street Yard, in the circle marked "168"; it occupies a very large space on the
Page 297 east line of Second Street between the main line of the Manufacturers Railway and Arsenal Street. The building known as the Ice House begins at about the place where our tracks marked in yellow end, and extends to Second Street. I should judge the Ice House occupies a space 325 feet long on the east line of Second Street by 400 feet east and west. The Ice House is where the ice is manufactured. On the west line of Second Street across from the Ice House, paralleling the west line of Second Street for approximately 200 feet, is the Wash House; it is probably 60 feet east and west.

Between the Wash House on the west side of Second Street and the Ice House on the east side of Second Street, and between Pestalozzi Street on the north and Arsenal Street on the south are two spur tracks branching off the Second Street line to the Wash House. They are marked in green. I call them public tracks, used by the public.

Page 298 Q. Yesterday morning when I was out there both those tracks from the end of the connection to the main stem were occupied by very large cars (you know the kind, built away up), filled with beer barrels. Whose cars were those? A. Those were the cars operated by us that are owned by the Anheuser-Busch

Brewing Association, and no doubt contain washed beer kegs which were to be transported to the filling houses; while they are public tracks, they are franchise property on streets owned by the City of St. Louis, and anybody could demand service on them. I freely admit we have never had any very great demand made upon us to place cars there, and they are almost exclusively used in the intra-state business of the Anheuser-Busch Brewing Association.

Q. Taking the tracks west of Second Street between Pestalozzi and Arsenal Streets, or the fan-shaped tracks, as you spoke of them a few minutes ago, marked "Shipping or loading yard," that space is the shipping or loading yards of the Anheuser-Busch Brewing Association, is it not? A. The tracks in that space are owned by the Anheuser-Busch Brewing Association, and are operated by us upon the lease. A majority of the use of those tracks is in the preparation of loads out from the Anheuser-Busch Brewing Association. There is also a use made of those tracks that affects everybody's business that is loaded up on the hills around Thirteenth or Eleventh Streets. We bring business down and shove into these tracks until such a time as we are ready to make a delivery to the Wiggins or Iron Mountain, and we use about one-third of that, as the switching yard in preparation of what railroad
Page 299 men call "drags" to be applied to our immediate connections.

We also have there, as you might have noticed, a platform, and on this platform it is frequently the custom to unload livestock belonging to people other than the Anheuser-Busch Brewing Association; in fact, we have even unloaded livestock for the Government right in there, as well as vehicles. We have some general use for other people than the Anheuser-Busch Brewing As-

sociation, as well as the double use for them of the railroad, in the way of switching and economizing in our movements.

Q. Yesterday morning that yard was filled with cars with the white colored triangle, the eagle, and the "Budweiser Beer." Those were the cars in which the Anheuser-Busch Brewing Association transports its products, were they not? A. Those cars were placed there, no doubt, for the purpose of receiving outbound loading from the Anheuser-Busch Brewing Association and the outbound loading received from the Anheuser-Busch Brewing Association would be drayed from up here on Ninth Street near Wyoming from their Stock House down to Arsenal Street, brought into that yard and loaded into those cars. The chances are that all of those cars as you saw them yesterday might have been for the Anheuser-Busch Brewing Association, but that does not follow that at all times all of the cars are for the Anheuser-Busch Brewing Association.

Page 300 I believe we now have four yard clerks and our superintendent. The yard clerks go on, I think, at seven in the morning. I do not know where they were yesterday morning, but I presume, if they were not out taking the loads in little yard books, that you might have found one or more of them in our superintendent's office, located just at the entrance of this yard you are questioning about. I found them there this morning. We do not maintain agents—now that I get you—in the sense of somebody that stays there all the time. We do not maintain that kind of agents. We maintain people who are moving around all the time, to be at such service as they may be; but, on the other hand, if you request that we tally a carload of freight in a car and give you a receipt that does not bear shippers' load and amount notation, then we will furnish you an

agent anywhere you want to unload a car. But there is not a great deal of that kind of business handled now.

Q. The agent is kind of a roving individual that you have to hunt up when you want to transact business? A. Well, we do not have much complaint. We have an agent in the South Side Bank Building office works. We usually find that people get us when they want us, and there are very few complaints.

Q. Mr. Moore, the services of this railway are absolutely indispensable to the operation of the brewery in the manufacturing of the beer, and the plant could not be successfully operated without those services, could it? A. If I have to answer and form an opinion as to whether the Anheuser-Busch Brewing Association could do its business without the railway——

Mr. Andrews: We object, but there is nobody here to rule on the objection, so, Mr. Moore, answer it as you can. If you do not know, say so. A. I do not feel qualified to state under oath whether the Anheuser-Busch Brewing Association could maintain its business without the railroad, and my personal opinion might not be worth a great deal; but if I owned the business and could not run the business any other way than without the Manufacturers Railway, I would find a way of running my business, I think.

Mr. Esterline: Q. If these freight stations were established for the receipt and delivery of freight at some of the various points indicated here as public track yards, and the business grew, it might interfere with the operation of that plant to a very consider-
ge 302 able extent, might it not? A. The growth of the outside business in the six years I have been here has interfered to a very considerable extent with the conduct of the business of the Anheuser-Busch Brewing

Association as it was conducted when I first came here; and as the outside business increased (I believe in January, 1915, it was about 39 per cent of our entire business) as to the increase in this particular zone, it would interfere more or less with the Anheuser-Busch brewing business. I said 39 per cent, change that to 34.8 per cent, of the business transacted in January was for people other than the Anheuser-Busch Brewing Association.

If I got an order from Armour or Swift to put in a train of stock cars, and from some other company to put in a train of some other kind of cars, it might not seriously inconvenience the operation of that plant if I complied with those demands, so far as I see. The little stock yard that we have is way down here on Zepp Street. I have never been called on to move over 125 cars of stock in a month, and that does not bother the Anheuser-Busch Brewing Association.

Q. If request were made on you, could you empty these cars in the shipping or loading yard and the First Street yard, of the cars which are standing there, and store cars for Armour, Swift or Morris to the same extent as you store them for the St. Louis Refrigerator Car Co. or Anheuser-Busch Brewing Association? A. Mr. Esterline, I desire to give you just the exact information. We do not store cars in the First Street yard for anybody. We do not store them in the Second Street yard.

Q. The yards are full of them? A. But they are there for some purpose. In the First Street yard they are in transit, coming from or going somewhere or other. They are in transit. In the morning there may be a great many more there. At noon there may be none. The switching of the cars is on the river front, on the tracks you see before you on the map

colored in yellow and brown. Those will accommodate at any time (and at any time since I have been here) as many as 200 cars; for anybody that would give me business to put in 200 cars I would be glad to do it. There has been no time when I would not be glad to do it.

Page 303 The Anheuser-Busch Brewing Association ships by freight out-bound, the following kinds of freight: Beer loaded in cars, bar fixtures, ice (large shipments of ice), and some rejected grains. Those are about their staples.

Page 304 I will, as you ask, trace a carload of beer, coming in empty and going out loaded, the various stops it makes, and what it takes on from the time it comes in until it goes out, handling it beginning where I first see the car, and taking it through and telling what is done with it until it is delivered to a connecting line.

We will presume that this car comes in empty and is received by the Manufacturers Railway north of Dorcas Street and east of the Iron Mountain yards, on what we term our "interchange tracks" with the St. Louis Transfer Railway. The car, no doubt, would be first set over in the river yards and held until we had need of it to load it. It would then be picked out of the river yard, brought over the viaduct, and set in the Second Street yard as an empty. When it was placed in the Second Street yard it would be iced from some other car containing ice, that had moved in intra-plant movement from the ice court to Second Street. After it was iced, teams would bring down the keg beer from the stock house up near Ninth and Wyoming Streets; enter the Second Street yard or the drive-way which is located just west of Second Street on the north line of Arsenal, and load the car with keg

beer. It would then be sealed, the billing tickets would be furnished to the Superintendent, and the car would probably be set in on this track to await more cars, or the time when it would be proper to make a delivery
Page 305 either to the Iron Mountain or the Transfer Railway. That would dispose of the car so far as the Manufacturers Railway is concerned.

Mr. Andrews: I would like to inquire, Mr. Esterline, whether the object of those questions is for the purpose of showing that the Manufacturers Railway is not a common carrier; because I understand the Commission has already held two or three times that it is such a carrier. If that is the object, then I want to object to it. We should have the right to ask the purpose.

Mr. Esterline: I think it is perfectly proper cross-examination. The witness has testified about the movements of these cars. I do not like to indicate ahead what I am going to ask the witness. I do not say what purpose or use it is for. I don't know that it is the right of counsel to insist on what the object of an examination is for, at any stage of the proceeding.

Mr. Andrews: I object to the question, if the purpose is to show that the Manufacturers Railway is not a common carrier.

Page 306 **Mr. Esterline**: Q. Will you trace a car going out loaded with bottled beer? A. The movement of the placement in Second Street would be similar, but instead of going in the Second Street yard at Second Street near the Pestalozzi main line, it would pass over and cross a certain part of the Dorcas Street yard and come into the Thirteenth Street yard; or it

would be set on a track, and the bottled beer in cases would be conveyed by patent carriers to the car and into the car. The car would then be sealed and properly billed, and the billing taken in to the yardmaster, and the car moved down and probably placed in the same place in Second Street that the other car was placed, until such time as delivery would be made to either one of the two direct connections. After that delivery the Manufacturers Railway handling of it would cease.

The car would not be iced; bottled beer is not iced. Only keg beer is iced; i. e., at Second Street where it is loaded. We cannot move a car of beer after the ice is in it and the beer, because it will shift the load. It is
Page 307 iced and loaded simultaneously. That is done in the Second Street yard. We move a certain number of cars in the intra-plant service that we perform from this ice court to Second Street, every day. Those cars containing the ice are set in there, and teams go to them, as they are loading cars on other tracks, and unload them of the ice and put the ice into those other cars, while they are loading the beer. Just how much, what percentage, and what time, I don't know, but I think it must go in rather simultaneously. I think the loaders know just about how to handle that.

When speaking of cost in my calculation, I have tried to consider the entire handling of the car, from the time it enters the plant and goes up to the bottling department, and was loaded and went out again; i. e., from the time it went in until it went out; but my cost figures have all been set up on a loaded car basis. In the case of the intra-plant movements, interstate movements, weight movements, and all, I considered
Page 308 the car coming in and going out, to get the level cost per car, based on the movement of the loaded car. I

considered everything from the time the car starts in and goes up the Dorcas Street line to the Thirteenth Street yard, loaded there on the track, and brought out again. I considered it in its entirety.

Q. That was the basis that you used on all of these calculations, as to all shipments? A. I believe that you are getting into deep water there. The cost that I have read into the record has nothing to do with the cost per car in that kind of a movement that you are describing, or, rather, in that way.

I have taken, in the figures that I have read into the record, the actual costs, and have divided that actual cost on a percentage basis, that percentage representing to my mind the percentage of use of the property in interstate movements. I have been trying to answer you on a level cost per car. I thought that was what you have been trying to find out. I may be at sea.

Q. I wanted to know if you considered the entire movement of the car, going up to the yard and back, in your computations? A. In the number of movements
Page 309 reported, I considered only the loaded cars. I did not consider the inbound movement, empty. You couldn't very well do that, because in a majority of the cases in the busy time cars coming in here under load, and up here (indicating on map) under load, are never moved as an empty, but go out under load; so for the purpose of trying to be absolutely fair, I have based all of my calculations on loaded movements.

Q. If a drag of cars were loaded in the Thirteenth Street yard by the pulleys that run along there at Thirteenth Street in the bottling department, the car is put in the building, as I understand it, and it is loaded there. If a half dozen cars were loaded in that manner, and the switch engine goes up there and

brings that drag of cars down, and switches it into the First Street yard, and permits it to stand there for an indefinite time, and another switch engine comes in and gets that and brings it down to the river yard, do you consider that whole movemnt as a part of the out-bound movement, in your computation? A. I consider that as one movement in the out-bound movement. Every loaded car completed movement, I have considered as one movement, no matter if—as a matter of information I would say that we handle cars an average of five and one-half times before we finally dispose of them, according to the yard reports.

Page 310 Q. Then you do not consider the movement of the empties going in? A. Only as a part of the performance of the loaded movement; but whenever a car or set of cars start from Thirteenth Street toward the river, I have considered each movement, whether it came down at different times or straight down, whether it stopped half a dozen times or twice, and was switched around over the yard, as just one movement, if they were loaded cars coming down.

Cross-Examination by Gov. Folk: I had abundant opportunity to present to the Commission all of the evidence I have given here, with the time limitations.

Page 311 This case was pending before the Commission five years the first day of the coming March. There were three different hearings; a large amount of testimony was taken in the proceedings before the Commission. I testified at great length, being on the stand more than two days.

Q. Why did you not testify then to all that you knew? A. I believe that I could take my old testimony and go over it, and reproduce what I am giving now. The reason I did not do it then, I suppose, was be-

cause the Examiner in charge and the attorneys at interest did not think that that was the line of testimony they wanted.

I prepared the Interstate Commerce case according to my interpretation of what the Interstate Commerce Commission wanted to know, and my attorneys in that case allowed me that leeway and privilege. Now this other case comes, and I don't know a thing about law, and I am preparing this information to meet what seemed to be the figures that they expect in this case. That is as full an explanation as I can give.

I say, I think I could take my testimony before the Commission and reproduce what I have testified to
Page 312 here, subject to time limitations; that is, the testimony before the Commission could be so analyzed as to produce substantially the same testimony that I am giving today. My testimony is not a mere repetition, because it was not used to reproduce this testimony until today. I don't think an attorney in the house can take that testimony and analyze it and arrive at the figures that I have arrived at today. I could do it; had I been asked to do it, I could have done it then; but that is a matter of accounting. Certain conclusions, certain testimony, has been given today that was not brought out by the Examiner or attorneys on either side heretofore.

Q. In the petition filed before the Commission by the Manufacturers Railway, it sought to have the Commission establish through routes and joint rates, and to order the trunk lines to make a division with the Manufacturers Railway of $4.50 a car. Is that correct? A. That is the bill I read. I can say that that is one part of that bill that never met my approval. I disagreed with the attorneys who filed it.

Q. The Interstate Commerce Commission, in accordance with the prayer of that bill, did order the establishment of through routes and joint rates to points along the line of the Manufacturers Railway at rates not to exceed the St. Louis rates by more than $2.50? A. Yes, that is about the construction I placed on the order. It is not according to my way of thinking, that the only interest of shippers along the line of the Manufacturers Railway could have in this litigation would be securing to them the St. Louis rates. I would think the shippers along the line of the Manufacturers Railway would desire to perpetuate the competitive service they have received since the Manufacturers Railway has been serving them; and in order to do that they would want the railroad (as people seem to want railroads in general) to make a sufficient return on their business to keep them operating, and would not want the Railway to operate at such a decided loss that it would either cease to operate and sell out to somebody else, or be operated as the railroad of a man who had been known to be charitable.

Page 314 Q. Why don't you increase your rates to shippers, if the shippers are so much concerned in the Manufacturers Railway? A. The shippers have stood loyally up for the $2.00 increase and have, with very few exceptions, still patronized the Manufacturers Railway. The railway increasing its rate would add a burden on the shippers which they would be very foolish to stand, and had I been a business man myself on the Manufacturers Railway, when it had no divisions that would allow it to forward and receive shipments on through rates, I would have hauled my business elsewhere by team, rather than to the Manufacturers Railway, provided I could have performed that haul

at a cost not exceeding the extra cost that would entail because of my using the Manufacturers Railway.

Q. You know you are at perfect liberty, so far as the law is concerned, to increase your rates to the shippers along the line of the Manufacturers Railway? A. And thereby get no business.

Q. So far as the law is concerned, there is no objection to your increasing your rates, if you do not think you are getting enough? A. Well, the Commission says that we can have St. Louis rates, plus some amount not greater than $2.50. Then I presume we can lawfully charge on this interstate and intrastate business, which the city of St. Louis cannot legislate for, $2.50 above the St. Louis rate; but by so charging we would not have any business to move under the tariff.

Page 315 If I were a shipper, it would be my construction that having secured the right to rates upon the St. Louis basis, the shippers have no further concern than to keep the Manufacturers Railway going. The Commission having granted the prayer for the establishment of through routes and joint rates, permitting trunk lines to establish rates to points along the line of the Manufacturers Railway at the St. Louis rate, the only question remaining seems to be the matter of divisions or absorption.

The last time I had knowledge of it, the stock in the Manufacturers Railway was owned by the holders of a majority of the stock in the Anheuser-Busch Brewing Association, and my opinion is that the condition has not changed. The Anheuser-Busch Brewing Association is the heaviest shipper over the Manufacturers Railway.

Q. The yards shown upon the map, the fan-shaped tracks that you have spoken of, are used practically

Page 316 exclusively by the Anheuser-Busch Brewing Association? A. That is not correct. About one-third of those yards are used for the purpose of holding cars pending the final disposition of them; and frequently other of the public than the Anheuser-Busch Brewing Association use a part of those tracks in the Second Street yard. I have in mind a specific case where some of the Government officials at the Quartermaster's Depot unloaded live stock, vehicles and household goods upon the platform of this yard; and oftentimes automobiles come in and are unloaded on the platform.

Q. When the Manufacturers Railway leased these plant facility tracks from the Anheuser-Busch Brewing Association, the lease provided that the use of the tracks by the Manufacturers Railway should not interfere in any way with the use of those tracks by the Anheuser-Busch Brewing Association, did it not? A. Governor, I am guilty of that first lease, and I am not a lawyer. I drew that to perpetuate what we call in Missouri an "oral license," the right given to me by word of mouth to use that property. I don't know whether that is a good law term or not. I drew the lease up, and my attention was called during the first
Page 317 hearing by the attorney for one of the companies, to that particular part that you cite. He happened to be a friend of mine, and he said, "Frank, you had better have that changed."

Just as soon as we got through with that hearing I took the matter up formally with the Anheuser-Busch Brewing Association, and we made another lease, which has never served the public any better, but it seemed to comply more particularly with the law. That lease, I believe, I had the foresight to present to Mr. Kirby for his approval before it was finally ex-

ecuted. The second lease had been in the hands of the Commission long before they made their opinion, and the quotation from the first lease by Mr. Harlan in his dissenting opinion seemed to me to be rather peculiar, because he had for years had the second lease which did not contain the clause which you have cited.

I wish to put into the record that, without any suggestion from the officials of the Anheuser-Busch Brewing Association, and after consultation with Mr. Adolphus Busch, I myself wrote that lease, and without him or any other of the Brewing Association officials, incorporated that clause, because I thought they were due to have certain protection against certain tracks. When I eliminated that clause I submitted the lease to Mr. Kirby, who was at that time also attorney for the Anheuser-Busch Brewing Association.

Page 318 And insofar as the use of the general public may be concerned, or has been concerned in the past, that first lease operated identically the same as the second lease, and no one has ever since February 19, 1909, been denied the use of any track locations that they requested on the Manufacturers Railway. Mr. Kirby at that time was the attorney of both the Anheuser-Busch Brewing Association and the Manufacturers Railway. I went to him as attorney of the railway. I had nothing to do with the Anheuser-Busch Brewing Association.

Page 319 Q. While the ordinary shipper along the line of the Manufacturers Railway was interested only to the extent of getting St. Louis rates, and to the further extent of keeping the road there, the Anheuser-Busch Brewing Association had a further and greater interest, in that a majority of the stock of the Manufacturers Railway was owned by the holders of a majority

of the stock in the Anheuser-Busch Brewing Association: Is that correct? A. As you state it. It has not, since I have been here, been a living asset. In other words, the stockholders of the Manufacturers Railway have never been benefited to the amount of five cents cash in the six years I have been here; but on the other hand, have been called on to put up money not only for the operations of the railroad, but for such improvements as have been made. Since I have been here all of $1,500,000, I believe, excepting $250,000, i. e., $1,250,000 actual cash, plus $375,000, the proceeds of a note, has been put up by the stockholders of the Manufacturers Railway.

I don't know the names of those stockholders. At
Page 320 one time I did, but since the death of Mr. Busch the stock has been turned over to the trustees under the will, and I don't know whether it has been distributed. While Mr. Adolphus Busch lived, the greater portion of the stock in the Manufacturers Railway was in his name.

Q. So the Anheuser-Busch Brewing Association had an interest in the Manufacturers Railway different from the interest of the ordinary shipper?

Mr. Andrews: I object to that. That is a conclusion, and I ask that to be stricken out. You assume facts not shown to exist in this record.

Gov. Folk: Q. The Anheuser-Busch Brewing Association, by reason of the common ownership of stock in the Manufacturers Railway and in the Brewing Association, had an interest in the Manufacturers Railway different from that of the ordinary shipper along the line of the Manufacturers Railway? A. That does seem to border on a question of law. My opinion is

that the stockholders who owned stock in common had an interest in its property. I may be wrong, but I don't think that either corporate interest has an interest in each other. The point I tried to make is that because some individuals who own the controlling stock in the railway also own the controlling stock in the Brewing Association, that made no legal connection between the brewery and the railway.

Page 321 Q. But, as a matter of fact, as a practical man, Mr. Moore, you know that the fact of the stock of the Manufacturers Railway being owned by those who own the stock in the brewery, that that gave to the brewery a different interest in the Manufacturers Railway than that of an ordinary shipper? A. I would like to answer that as clearly as I can, Governor. We will suppose that Mr. A. owns seventy-five per cent of the stock of the Anheuser-Busch Brewing Association. He also owns seventy-five per cent of the stock of the Manufacturers Railway. It would depend wholly upon this Mr. A. as to whether one corporate interest would have any influence over the other corporate interest. The same men who control the brewery control the Manufacturers Railway, that is true; and it depends upon that man and on his administration of those properties whether or not that relationship should ever reach a point where it would become unlawful or a menace.

Page 322 The Manufacturers Railway leases certain tracks owned by the Anheuser-Busch Brewing Association, as well as right-of-way upon which the Manufacturers Railway has constructed its own tracks; and for the use of the tracks leased and of the tracks constructed by it on the property leased, and for the further use of the driveways and other railroad facilities on this leased ground, pays to the Anheuser-Busch

Brewing Association the sum of $24,000 a year. Not $36,000, nor $26,000.

Page 323 (The witness was here shown his report filed with the Interstate Commerce Commission for the year 1914, concerning which the witness testified): This question as asked leaves the amount of property for which we have paid and are now paying $24,000 a year, and takes into consideration other property of the railway that is located east of the right-of-way of the St. Louis Transfer Railway Company, north of Utah Street, and west of the river, upon which the Manufacturers Railway has erected its engine house and machine shops, and which property it now owns, but which at that time it did not own. In other words, a part of the river yards that on this map (which is in the record as an exhibit) the tracks are colored brown. That is the additional $12,000. At the time of that report, that amount of rental, $36,000 a year, accrued to the brewing association.

Page 324 Now the Anheuser-Busch Brewing Association receives $24,000 under that lease, and $2,400 a year for the use of the office buildings.

Q. That extra $12,000 was divided up as follows:

Park Avenue tracks, per annum	$ 4,000
Wharf rental, Anheuser-Busch Brewing Association	4,000
Wharf rental, Adolphus Busch	2,000
Property at North Trudeau Street	1,000
Property, Lami to Baden	1,000
Total	$12,000

A. If it covers all of these different pieces, it includes in addition to that river property (I thought you would probably bring it in later) some property

which did not belong to the Anheuser-Busch Brewing Association, but was property that I purchased for Adolphus Busch, and which was his personal property after I had purchased it for railroad purposes. I thought the $12,000 might appear like it all went to the brewing association.

Concerning the change in the lease, eliminating the clause reserving the prior right to these tracks to the
Page 325 Anheuser-Busch Brewing Association; I made that change after consultation with an attorney who appeared in our first hearing for one of the trunk lines, when he told me it was a dangerous clause to have there. Then immediately after the case I took it up with the Brewery. I did not say without a consultation. I made the first lease at Mr. Busch's suggestion. Then I took it up with the Brewery, after the hearing, and had this new lease executed. I did not say just now that I had eliminated this clause without any consultation with any official of the Brewery. I stated I put in that limiting clause. I did not take it out until I did have a consultation. I did not change the lease twice; there was a first lease, and a superseding lease. All the authority I need to make a change in the lease is the authority of the Anheuser-Busch Brewing Association, and I believe it is true that the same men control the Manufacturers Railway who control the Brewing Association. The result is that any kind of a lease could be made that seemed desirable to those men. I was surprised that they did not stick us with a lease at something like its real value. They could have made a lease for almost any amount—yes, sir.
Page 326 They could have made it $50,000 a year as well as $24,000 a year, and they could now, if that lease was vacated. I don't know what their power would be to vacate the lease. They do control the Brewing Asso-

ciation and the Railway, and they could make the lease in any amount that would be mutually agreeable to their representatives on each of the boards.

Q. That would be agreeable to them, because they control both the lessor and the lessee? A. There are some people in the world that cannot be controlled enough to make them do what they think is wrong.

Q. The common owners, then, of the Brewery and the Railway could make that lease $50,000 a year, if they saw fit to do so?

Mr. Andrews: We will admit that the Board of Directors of the Manufacturers Railway, that is, the majority of the Board of Directors, could pay any sum they want for that lease that they see fit; and the parties who own the ground, if they get the concurrence of the Board of Directors of the Manufacturers Railway in the proposed lease——

Gov. Folk: You admit that the amount of this lease is a pure fiction; it makes no difference whether it is $50,000 or $20,000——

Mr. Andrews: No——

Gov. Folk: That these common owners could make that amount any sum they might see fit?

Mr. Andrews: I admit that Adolphus Busch, or the Brewery owning the land, could have leased it to the Railway for one dollar, if they wanted to, or could have leased it for $50,000 if that would be acceptable to the Railway Company.

Gov. Folk: Q. Suppose, as your attorney has indicated, he has admitted that Mr. Busch could have made that lease $1.00 if he had seen fit to do so——

Mr. Andrews: Whoever owned the ground. I don't know whether Mr. Busch owned it.

Gov. Folk: Q. Then it would be worth, according to the estimate of your expert, $68,000 a year for each year of the lease, would it not? A. I prefer to testify to only things that I have handled myself, and I did not handle that expert's work in any shape or form. I am not familiar with the bases of the computations that he has used; and my way of arriving at
Page 328 the value of that lease (doubtless wrong) would not have been the same method that he used; and I am not qualified at this time, until I can study his method, to pass upon what he has read into the record as the value of that lease.

I did speak this morning of the freight of the Brewery being conveyed to the yards by carriers, by wagons or trucks, in some cases conveyors, patent carriers or conveyors.

Q. Why did not the Manufacturers Railway Company lease these conveyors? A. Well, they did not need them in their busines, any more than they needed to lease the wagons and trucks that conveyed the keg beer down to Second Street, or any more than we needed Obert's truck wagons that convey his beer to Ninth Street, or the American Brewing Association trucks that convey their beer up to our post office yard.

Q. Take the case of Obert; he hauls his freight by wagon and team. Do you think that you would be justified in leasing those trucks and teams from Mr. Obert, and paying him $5,000 a year or $10,000 a year as a lease or rental for his teams to haul his own freight? A. Certainly not, no, sir. It is an unfortunate selection to make, from your viewpoint, because he performs less teaming service per load than any

other customer we have of the railroad. He is closer——

Page 329 Q. Take the case of the Anheuser-Busch Brewing Association before this railroad was there. It hauled its freight by teams and wagons, did it not? A. It must have done so, yes; and that hauling made a considerable expense to the Brewing Association.

Q. The service performed by these teams and wagons in hauling the product of the Brewery to the trunk line, is now performed by these tracks in the fan-shaped enclosure, by the Manufacturers Railway, is it not? A. The shipping of beer in carloads, I believe, commenced somewhere in the late 60's, only after they had learned the art of putting it up in bottles. Up to that time there was no necessity for any great amount of car space to serve the Anheuser-Busch Brewing Association, and their business that went by rail was teamed to and from the Iron Mountain wherever they could spare team tracks for the use of the Brewery. Now, with the rapid and great growth of their business, additional car space had to be provided. It was not provided by the Iron Mountain, but was provided by the individual effort of Mr.
Page 330 Adolphus Busch; and, not thinking to build a railroad, he secured franchises in the city of St. Louis which enabled him to build certain trackage and to operate them, he thought.

It developed that he could not operate those tracks and run them as a railroad, but that a railroad corporation had to be chartered by the State of Missouri; and it was then that Mr. Busch, and Mr. George F. Meyer (since dead), Mr. W. D. Orthwein, and one or two others, formed a company, incorporated the railway, and built it. I will say that that railroad was built in order to furnish car space to hold the cars that had

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to be loaded by team now, just the same as cars had to be loaded by team in those days. So he has not cut out his teaming. I am not qualified to say——

Q. Before the Manufacturers Railway was placed there, the Anheuser-Busch Brewing Association had to team or haul its freight to the trunk line. Now it does not have to do that. That service is performed by the Manufacturers Railway? A. It has to haul its freight to either the trunk line or the Manufacturers Railway, just the same as the American Brewing Association will have to haul its freight either to a trunk line or to the Manufacturers Railway. It is not true that the same service formerly performed at great expense to the Brewery is performed by the Manufacturers Railway, and instead of being an expense to the Brewery, the Brewery receives $24,000 a year income from that service.

We do pay the Brewery, in real money, $24,000 a
Page 331 year, for the privilege of using a vast area of property, trackage and other facilities, and they still haul their freight to a railway, the Manufacturers Railway. They would have to haul it probably to Miller Street, approximately one and a half miles, if they wanted to find anything near adequate in the way of car space that would accommodate their business, and the reason that they haul it to the Manufacturers Railway is that the Manufacturers Railway is closer, and the car space is ample. We have more team track on the Manufacturers Railway than any other one line in the City of St. Louis has.

Q. Suppose that the owners of the Brewery did not own the Manufacturers Railway, and suppose the Manufacturers Railway were to cancel this lease. What would the Brewery do, or what could it do? Would it not have to turn over its freight to the Man-

ufacturers Railway? A. Yes, sir; because the Manufacturers Railway, or some other railway, would have the only right to operate along and across the streets and alleys in the city of St. Louis, and each yard of the Brewery is controlled by tracks that are constructed along and across streets and alleys, and operated on them. So, if the Manufacturers Railway were to cancel this lease and get rid of this obligation of $24,000 a year, the Brewery would have to turn over its freight just the same to the Manufacturers Railway, or would have to team it down to the Iron Mountain; but by so doing, the Railway would voluntarily throw away over $54,000 worth of revenue earned on that leased area from other people than the Anheuser-Busch Brewing Association, which would not be a business-like thing to do. Other shippers on these same fan-shaped tracks ship products equivalent to $54,000 a year. If the lease were cancelled, how could I get the shipments? I would not have the tracks there.

Page 333 Q. There is your Manufacturers Railway there? A. Yes, but it is on leased ground. Almost everything in that middle zone is on leased ground, and that is where the heavy business comes from, the middle zone. The figures are in the record, and show the percentage of the entire business that is taken up out of the middle zone, and shows further the percentage of that middle zone business which is Anheuser-Busch Brewing Association, and the percentage of that middle zone business which is other shippers than the Anheuser-Busch Brewing Association.

Gov. Folk: Leaving out the Second Street line, what proportion of the freight over the Manufacturers Railway is shipped by the Anheuser-Busch Brewery?

A. I don't like to read figures from memory, but I will say that that is answered in the record in case 3151. I cannot remember the percentage. It was about ninety per cent. Then that ninety per cent is sub-divided to show the percentage of business from the middle zone that is contributed by other people than the Anheuser-Busch Brewing Association. We
Page 334 were assessed for taxes for 1914, value per mile on 2.56 miles, $115,000, total value $424,960.

Q. And yet you are attempting to prove here a valuation of five times that amount, and more? A. I expect the assessed valuation would be even less than that this year, even though we have that physical property. This valuation——

Q. Did you appear before the Board of Equalization, or have somebody appear? A. I appeared in this proceeding, and I could not make any impression on them at all. I was trying to make them assess it less than $400,000.

Q. And yet you come here and swear the road is worth more than $2,000,000? How can you swear one thing before the Board of Equalization, and another
Page 335 thing before the Court? A. I did not swear that. I have never sworn to any valuation. I used Mr. Kendrick's figures. I have no objection for you to place the proceedings before the Board of Equalization in evidence. In appearing before the Board I was not put under oath, it was a matter of argument. They don't assess a railroad property on its value as represented in its trackage. It is sometimes pretty hard for me to know what they do assess it on; but they gave me to understand that they used the earnings largely
Page 336 in arriving at these figures, and it was rather immaterial as to how much the Railroad Company reported per mile of value; that they readjusted that according

to some formula that they had worked out, that will give you the net result. If they have used a wrong formula with us, they have used it with everybody else, and I feel quite sure that we have paid more taxes according to our value than any other railroad in the City of St. Louis. I mean to say that we have not the power to change the views and ideas of the Board of Equalization.

I did not testify before that Board, nor was I sworn. We hand in each year an assessment list stating our mileage and our property, and to that list we have to swear that we have stated our property. I cannot tell you what I stated the value of the Manufacturers Railway to be in that statement that I made to the
Page 337 State Board of Equalization; but up to the conclusion of the last hearing they had read into the evidence and submitted as exhibits, copies of all those same things that you are speaking about. I have no objection at all to my sworn statement to the Board of Equalization, giving the value of the Manufacturers Railway as less than $400,000, to be filed as an exhibit to my testimony here. It is in the record of case No. 3151. Those lists were submitted as exhibits.

Q. On a valuation of $400,000 you could haul these cars at less than $1.00 a car and make money, could you not? A. No. sir. The best we have been able to do down there was to show an operating cost of approximately $2.50.

Q. But that has $24,000 added that you pay to the Brewery? A. And if it were anybody else with whom I had done business in St. Louis, it would be $100,000 that I would pay for the use of the self-same privileges and contracts.

Page 338 Q. That is mere argument, Mr. Moore? A. It seems to me like yours is argument, too.

Q. The ordinance of the city of St. Louis prohibits your road from charging more than $2.00 a car? A. On intrastate city movements, and we don't violate that ordinance, but in consideration——

Q. You take all the business you can get, don't you? A. The less business I get the better I like it, under that rate, but we refuse no business under any tariff that we have published. I might say, that I pay out an amount equal to $3.86 a car for every loaded movement I make. When I get $2.00 a car, I figure that I am paying the city the difference between that $2.00 and $3.86, or $1.86, as remuneration for the use of the franchise that I am operating under.

Q. Mr. Moore, the Manufacturers Railway, having gotten the relief from the Interstate Commerce Commission it asked, for the establishment of through routes and joint rates, the shippers being satisfied because they have gotten the St. Louis rate, the only matter that remains to be determined being the question of divisions, why are you complaining now? A. Not getting divisions.

Q. That is a matter for the Interstate Commerce Commission, not for the Court? A. The Interstate Commerce Commission clearly indicates in the reading matter of their opinion that they will be glad to have us take this matter to the Court. That stands out
Page 339 just as clear as any other part of their opinion. We have been before the Commisison five years the first day of next March. They had three hearings before the Commission and three oral presentations. Mr. Kirby represented me in all of them. Five years is a long time for a railroad to live as we have lived, and I have some hopes that maybe the Court proceedings would determine more speedily the question which the Interstate Commerce Commission has been handling

for five years; and which at one time they approved at $4.50, which at another time they seemed to approve at $2.00, and which a third time they seemed to approve at $2.50. They have had five years on it.

Q. You are now going before the Court because you think you would get quicker action before the Court on the matter of divisions than you could before the Commission? A. And maybe some action that we can proceed with the operation of our property with a little bit more assurance of perpetuity.

Q. You indicated that you are not satisfied with the petition your attorneys filed in asking through routes
Page 340 and joint rates? A. I wanted to word that petition a little differently. I did not do it because the attorneys overruled me. I was the client, but they were headstrong enough sometimes. Mr. Kirby was one of them. He was headstrong enough to have his way that time. Mr. Cassoday, who is now dead, was a pretty headstrong fellow, too, and Mr. Schnurmacher. I felt as though the wording of that bill, from a railroad viewpoint, would not hold water, but I couldn't make myself clearly understood. I still think I was right. I wanted that bill to be drawn in the presenta-
Page 341 tion to the Commission, asking a continuation of the arrangement which had existed up to March 1, 1910. I would have asked for a continuation of the same condition that existed up to March 1, 1910. The petition filed asked for the establishment of through routes and joint rates, which they tried to insist to me meant the same thing, but which never has meant the same thing to me, yet.

The Manufacturers Railway does no passenger business. While it had four engines when the case was before the Commission, it grew during the five years. Now it has seven, and good ones.

Q. It performs no reciprocal switching like other roads, does it? A. I have never been clear as to what Martin H. Smith's "Reciprocal switching" means. I do not like to answer a question that I do not understand.

Q. One road switches for you, and then you switch for that road, and then you balance accounts? A. Well, that don't mean much to me. It never has been done in the world on that basis. No other road is doing switching for us; our business is to originate and distribute freight; it is not in any sense an intermediate switch movement.

Page 342 Our only competitor is the Iron Mountain, and in a negligible degree the St. Louis Transfer Railway Company, which is part of the Terminal Association. We want our competitor, the Iron Mountain, to make us an allowance of $4.50 for each car that we handle that moves in transportation over their lines.

Q. Are you willing to give them an allowance of $4.50 a car? A. We have to pay right royally for any business we give them for city movement. I would be very glad to get off on an average of $4.50. Their tariffs are the local distance tariffs of the State of Missouri, and I have known cases where hollow brick and tile, low class freight, have cost as high as $12.00 and $14.00 for switching. They do not have a car basis; they work on a mileage basis.

(There was then filed as an exhibit to the testimony of the witness, subject to correction, a memorandum furnished by Governor Folk, showing the names of the railroad trunk lines entering the city of St. Louis that have filed tariffs to points along the line of the Manufacturers Railway, on the St. Louis basis, these being the tariffs to which the Manufacturers Railway filed concurrences.)

(Exhibit to testimony of G. F. Moore, record p. 342-3.)

9th
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Railroads complying with the Order of the I. C. C. in Docket Case No. 3151—Manufacturers Ry. et al. v. St. L. I. M. & S. Ry., et al.

Memo:—

The following railroads have filed tariffs indicating their compliance with Order of the I. C. C., issued in connection with Docket No. 3151—Manufacturers Railway case:—

ROAD	TARIFF I. C. C. No.	EFFECTIVE DATE
B. & O. S. W. R. R.	Absorption Tariff 6879	Jany. 19th, 1915.
C. & A. R. R.	Local & Joint Tariff 1632	Jany. 21st, 1915.
C. & E. I. R. R.	Absorption Tariff 2616	Feby. 28th, 1915.
C. B. & Q. R. R.	Absorption & L. & J. 11083 Tariff 10610	Jany. 1st, 1915.
C. P. & St. L. Ry.	Absorption Tariff 997	Feby. 16th, 1915.
C. R. I. & P. Ry.	Absorption Tariff C-9501	Jany. 1st, 1915.
C. C. C. & St. L. Ry.	Absorption and L. & J. Tariffs 6354	Jany. 20th, 1915.
Ill. Cent. R. R.	Absorption and A-8213 L. & J. Tariffs A-8172	Jany. 1st, 1915.
M. & O. R. R.	Absorption and A-726 L. & J. Tariffs A-736	Jany. 20th, 1915.
M. K. & T. Ry.	Absorption and A-3535 L. & J. Tariffs A-3627	Jany. 3rd, 1915.
Mo. Pac. Ry.	Absorption and 9481 L. & J. Tariffs A-2154	Jany. 1st, 1915.
St. L. I. M. & S. Ry.	Do 9532 A-2534	Do.
St. L. & S. F. R. R.	Absorption Tariff 6691	Feby. 16th, 1915.
Southern Ry.	Local & Joint Tariffs A-6426	Feby. 15th, 1915
T. St. L. & W. R. R.	Absorption Tariff A-376	Jany. 5th, 1915.
Vandalia R. R.	Absorption Tariff 2771	Jany. 18th, 1915.
Wabash R. R.	Absorption Tariff 3636	Jany. 1st, 1915.

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The tariffs shown opposite each of the roads specified above, are but one issue of each line, in which joint

rates on St. Louis basis were established from and to stations on the Manufacturers Railway. Others were filed effective various dates.

The only railroads which do not appear to have complied in any manner with the Commission's order in the above case are the L. & N. R. R. and St. L. S. W. Ry.

A. H. F.
2-4-15."

Page 343 **Re-Direct-Examination by Mr. Andrews:** The Manufacturers Railway commenced a less than carload business on the 12th day of February, 1913, the balance of that month producing twenty-three cars, and during the time that we operated under tariffs, up to and including the business of September, we handled twenty-three million pounds of freight, which I believe were loaded into about seventeen hundred cars, as less than carload freight, and tallied freight.

Page 344 We have a freight depot for receiving less than carload freight, located at the corner of Third and Rutger Streets. That is now a very sick depot. This is what happened to it: The tariff don't provide revenue for the handling of less than carload business for the Manufacturers Railway. Our business grew to such an extent that the trunk lines interested one of their wagon transfer companies, the Columbia Transfer Company, to locate two blocks north of our depot, and allowed them a very liberal arrangement in the matter of draying merchandise from that depot to the trunk line depots, and they have gotten our business away from us during this period of inaction.

Concerning the testimony given by me before the Commission, I said that I could segregate the financial figures, not the different movements of traffic.

Re-Cross-Examination by Mr. Esterline: Q. The Manufacturers Railway does not make up any complete trains for the transportation of freight, does it?
Page 345 A. We make deliveries having as many as thirty or forty cars at one time. As to our having complete trains, in the sense of being equipped with an engine, cars and caboose, we don't have to use the caboose in our service; otherwise, every delivery is a train and worked on a train sheet.

Q. When cars are ready to be shipped, they are assembled in the river yard for delivery to trunk lines? A. More often than that, they are started from the Pestalozzi Street main line, and taken over for delivery to the Wiggins, if going to the viaduct; if going to the Iron Mountain, by——

Q. When you have cars from the Bottling Department, and other departments, that are going out, you assemble those at the Broadway yard, or some one of the other yards, and then take the drag out over the viaduct to the River Yard? A. Wherever it is most convenient, either in the First Street yard or in the Second Street yard, we collect them; whichever may be the most convenient at the time. Generally speaking, we have hours when we call on the different yards to take up loads and to deliver loads, but we cannot always abide by that schedule, and we make extra runs when necessary. Our assembling yards are the First
Page 346 Street yards, on the east side. We go out with our engine and pick up the cars or drags and bring them down to the First Street yard, or the Second Street yard and assemble them, and when we get the cars assembled then we take them out over the viaduct in pair, or four, or ten cars, according to the time when we want to make a delivery, in order to get certain trains

out of St. Louis. That regulates very largely the hours at which we deliver freight to connecting lines.

Page 347 **Mr. Andrews:** I offer in evidence the Journal of the State Board of Equalization for the Assessment and Equalization of Railroad, Bridge, Telegraph and Telephone Property of the State of Missouri, for the year 1914, showing that the State Board assessed, under the title of "All other property" relating to the Manufacturers Railway Company, $209,300.00——

Gov. Folk: We object to part of that being offered in evidence without the whole.

Mr. Andrews: We will put in the whole thing.

Gov. Folk: Then there is no objection, excepting the general objection to the testimony being taken at all.

Mr. Andrews: Will you admit that what is meant or included under the term of "All other property" is the franchise or franchises granted by the State of Missouri to the Railway for the privilege of operating the railroad, not including the franchise to be a corporation?

Gov. Folk: I will not dispute that the term "All other property" means and includes franchises as that term "All other property" is used by the State Board of Equalization.

The aforesaid Journal record is in words and figures as follows:

Page 348

"MANUFACTURERS RAILWAY

Aggregate and detailed description and valuation of property in the State of Missouri owned by the Manufacturers Railway Company on the first day of June, 1913, as assessed, adjusted and equalized by the State Board of Equalization in 1914.

County	Township	City and town	Roadbed, superstructure, rolling stock, buildings on right of way, and 'all other property.' No. of miles	Valuation per mile	Valuation in subdivision	Valuation in County
St. Louis City			2.56	$116,000	.....	$424,960.00
Total						$424,960.00

ITEMIZED STATEMENT

Length of road in State of Missouri 2.56

Rolling Stock

6 locomotives at $4,000	$24,000.00
3 box cars at $250	750.00
2 flat cars at $250	500.00
2 ballast cars at $250	500.00
1 wrecking car at $450	450.00
2 push cars at $10	20.00
Total rolling stock at $10,242.1875 per mile	$26,220.00
2.56 miles of roadbed and superstructure at $70,000 per mile	$179,200.00
Buildings on right of way at $4,000 per mile	10,240.00
'All other property' at $81,757.8125 per mile	209,300.00
2.56 miles distributable property at $166,000 per mile	$424,960.00"

Page 349 Mr. Andrews: We offer in evidence the complaint of the Manufacturers Railway Company, *et al.*, vs. St. Louis, Iron Mountain & Southern Railway, *et al.*, before the Interstate Commerce Commission in case I. C. C., Docket No. 3151.

Before the Interstate Commerce Commission.

MANUFACTURERS RAILWAY COMPANY, ANHEUSER-BUSCH BREWING ASSOCIATION, STECHER COOPERAGE WORKS, INDEPENDENT BREWERIES COMPANY, BRADBURY MARBLE COMPANY, ST. LOUIS BASKET & BOX COMPANY, FIDEL GANAHL LUMBER COMPANY, ST. LOUIS COOPERAGE COMPANY, and WESTERN FOUNDRY AND SASH WEIGHT COMPANY, corporations,
Complainants,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE MISSOURI PACIFIC RAILWAY COMPANY, THE WABASH RAILROAD COMPANY, MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, THE CHICAGO & ALTON RAILROAD COMPANY, CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, MOBILE & OHIO RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, VANDALIA RAILROAD COMPANY, TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY, CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS, corporations, and JOHN C. RAMSEY and HENRY M. MERRIAM, receivers of said CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS,
Defendants.

Complaint.

(1) The petition of the above named complainants respectfully shows that the complainant, Manufacturers Railway Company, is a corporation organized under and by virtue of the statutes of the State of Missouri.

(2) That the complainants, Anheuser-Busch Brewing Association, Stecher Cooperage Works, Independent Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel Ganahl Lumber Company, St. Louis Cooperage Company, and Western Foundry and Sash Weight Company, are corporations organized and existing under and by virtue of the laws of the State of Missouri, and are citizens of said state, and are each and all of them manufacturing or mercantile corporations engaged in business in the City of St. Louis, State of Missouri, and are each and all located upon and along the lines of railroad of the said complainant, Manufacturers Railway Company, and are shippers and receivers of freight moving over its said lines, in interstate commerce with other states and territories of the United States and foreign nations.

(3) That each of the defendants above named is a railroad company duly organized and is a common carrier of freight from one of the states or territories of the United States or from the District of Columbia to one or more other states or territories of the United States or the District of Columbia, or from one place in the United States to an adjacent foreign country, or from a place in the United States through a foreign country to another place in the United States, or are engaged in transporting in like manner property shipped from a place in the United States to a foreign country and carried from such place to a port of transhipment or from a foreign country to a place in the United States and carried to such a place from a port of entry either in the United States or an adjacent foreign country, and as such common carriers are each and all of them subject to the provisions of

the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplemental thereto.

(4) That in addition to the said complainants other than the said Manufacturers Railway Company there are many other business corporations or industries engaged in the shipment of goods and merchandise in interstate commerce, located upon and along the lines of the said Manufacturers Railway Company which are shippers and receivers of freight transported over said lines of railway, and many of which are dependent solely upon said Manufacturers Railway Company for the transportation, forwarding and receipt of goods and merchandise manufactured, used or dealt in by them and which have no track connections with any line of railway other than those of said Manufacturers Railway Company, and there are also many other business corporations and industries so located and likewise engaged in the shipment of goods and merchandise in interstate commerce, which are served not only by the lines of other railroad companies but also by the lines of the Manufacturers Railway Company.

(5) Complainants further allege that for a long period of time prior to March 1, 1910, there existed, under tariffs duly filed and effective, through routes and through or joint rates to and from points on the lines of railway of the said Manufacturers Railway Company from and to points on the lines of railway of each of said defendant railway companies and points beyond, and that the tariffs filed with the Interstate Commerce Commission by said defendant railway companies and by the complainant, Manufacturers Railway Company, providing for said through and joint

rates and the divisions thereof, were issued by the railroad companies and bear filing numbers as follows:

(a) B. & O. S. W. R. R. Co., Absorption Tariff, I. C. C. No. 6539, Section 1, page 2. Cancellation Supplement to I. C. C. No. 6553, Section 3, page 3.

(b) C., B. & Q. R. R. Co., Absorption Tariff, I. C. C. No. 9756, Item 21, page 7. Cancellation Supplement No. 2, to I. C. C. No. 9756, Item 21a, page 3.

(c) C., R. I. & P. Ry. Co., Absorption Supplement No. 52, I. C. C. No. C-7604, Item 3, page 95. Cancellation Supplement No. 58 to I. C. C. No. C-7604, page 8.

(d) Chicago & Alton R. R. Co., Absorption Tariff, I. C. C. No. 1700, Item 67, page 19; also Item 67dd, page 18. Amendment No. 59, I. C. C. No. 1700. Cancellation Supplement No 62, to I. C. C. No. 1700, Item 67ff, page 17.

(f) C. & E. I. R. R. Co., Absorption Supplement No. 4, to I. C. C. No. 2022 (see page 25). Correcting Supplement No. 52, to I. C. C. No. 2022. Cancellation included in new tariff, I. C. C. No. 2506, Item 88, page 31.

(g) C., C., C. & St. L. Ry. Co., Absorption Supplement No. 25, to I. C. C. No. 2442, page 2 (top). Cancellation Supplement to I. C. C. No. 5094, page 5, 2nd Section "D," page 6, Section 5.

(h) C., P. & St. L. Ry. Co., of Illinois, Absorption Tariff, I. C. C. No. 700, Item 30, page 6. Cancellation Supplement No. 4, to I. C. C. No. 700, Item 6a, page 2.

(i) Ill. Central R. R. Co., Absorption Tariff, I. C. C. No. A-5962, page 6. Cancellation Supplement. Sixth Revised, page 6, issued Jan. 10, 1910, effective March 1st, 1910.

(j) L. & N. R. R. Co., Absorption Tariff, I. C. C.

No. A-9938, page 272. Cancellation Supplement No. 596, to I. C. C. No. A-9938.

(k) Mo. Pacific Ry. Co., Supplement No. 63, to Tariff I. C. C. No. 9481, Item 18, page 7. Cancellation Supplement No. 64, to I. C. C. No. 9481, Item 43, page 9.

(l) M., K. & T. Ry. Co., Absorption Tariff, I. C. C. No. A-3341, Item 37, page 7. Cancellation Supplement No. 1, to I. C. C. No. A-3341, Item 31a, page 2.

(m) M. & O. R. R. Co., Absorption Tariff, I. C. C. No. A-524, Item 10, page 9. Cancellation Supplement No. 5, to I. C. C. No. A-524, Item 48, page 3.

(n) St. L. & S. F. R. R. Co., Absorption Tariff, Supplement No. 12, to I. C. C. No. 5817, Item 9a, page 2.

(o) Cancellation Supplement No. 14, to I. C. C. No. 5817, Item 39, page 2.

(p) St. L., I. M. & S. Ry. Co., Absorption Tariff, Supplement No. 53, to I. C. C. No. 9532, Item 17, page 7.

(q) Cancellation Supplement No. 54, to I. C. C. No. 9532, Item 41, page 9.

(r) St. L. S. W. Ry. Co., Absorption Tariff, I. C. C. No. 2960. Cancellation Supplement No. 1, to I. C. C. No. 2960.

(s) Southern Ry. Co., Absorption Tariff, I. C. C. No. C-1168, Item 11, page 4, also Supplement No. 9, to I. C. C. No. C-1168, Item 37, page 3. Cancellation Tariff I. C. C. No. C-1328, Item 10, page 3.

(t) Toledo, St. L. & Western R. R. Co., Absorption Tariff I. C. C. No. 650. Cancellation Tariff I. C. C. No. A-2, Item 8.

(u) Vandalia R. R. Co., Absorption Tariff, I. C. C.

No. 2419, page 2. Cancellation Tariff, I. C. C. No. 2421.

(v) Wabash R. R. Co., Absorption Tariff, I. C. C. No. 1511, Item 58, page 7. Cancellation Supplement No. 5, to I. C. C. No. 1511, Item 58.

(w) William Cameron, Agent. Bituminous Coal Tariff, I. C. C. No. D-32. Cancellation Supplement No. 2, to I. C. C. No. D-32.

(6) Complainants further allege that on or about the 31st day of December, 1909, each and all of said defendants sent or mailed to the said complainant, Manufacturers Railway Company, a notice to the effect that on and after March 1, 1910, no allowance would be made to said Manufacturers Railway Company for service in and around St. Louis, Missouri, and East St. Louis, Illinois; that said notice was sent or mailed as a result of joint and concerted action on the part of each and all of said defendants and as a result of an illegal and unlawful conspiracy, confederation and combination on the part of said defendants and each of them, and is in violation of an act of Congress known as "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," approved July 2, 1890, and known as the Sherman Anti-Trust Act.

(7) That in pursuance of said notice each of said defendants filed with the Interstate Commerce Commission certain tariffs, supplements or cancellations in the manner provided by the Act to Regulate Commerce and acts amendatory thereof and supplemental thereto, which said tariffs, supplements and cancellations became and were effective on the first day of March, A. D. 1910, in and by which the said defendants and each of them cancelled and annulled said through routes and through or joint rates provided by the

tariffs existing prior to said date as hereinbefore described and alleged, so that since said first day of March, A. D. 1910, there has existed no through routes or through or joint rates from or to points on the lines of railroad of said Manufacturers Railway Company in the said State of Missouri to or from points on the lines of railroad of said defendants or points beyond in states and territories other than the state of Missouri or to or from the District of Columbia or foreign countries and said defendants and each of them have failed and refused since said date to establish said through routes and joint rates as required by Section one (1) of the said Act to Regulate Commerce.

(8) Complainants further allege that for the said industries located exclusively upon and served solely by the lines of railroad of the complainant, Manufacturers Railway Company, there has not existed since March 1, 1910, any reasonable or satisfactory through route for shipments forwarded from or consigned to any of said industries, and that for the industries located in close proximity but not directly upon the tracks of said Manufacturers Railway Company there has not existed since said date any reasonable or satisfactory through route, and that as to the industries located both upon the tracks of the said Manufacturers Railway Company and the tracks of said defendants or either of them there has not existed since said date any reasonable or satisfactory through route, and that such through routes are necessary and essential to the business of said complainants and such other industries.

(9) Complainants further allege that said through routes and through or joint rates are necessary and essential to said Manufacturers Railway Company for

the reason that without them it will lose a large volume of traffic from industries upon, along or near its line of railroad, which said traffic will be diverted to the St. Louis, Iron Mountain & Southern Railway Company, which is the only competitor of said Manufacturers Railway Company in the part of the City of St. Louis, Missouri, where its said tracks are located, and that without such through routes and through or joint rates, the said industries along, upon or near the said lines of said Manufacturers Railway Company, and all other persons, firms or corporations in said City of St. Louis desiring to use or ship over the lines of railway of the said Manufacturers Railway Company will be greatly injured, for the reason that they and each of them will be compelled to pay, in addition to the existing tariff rates, charges for the services performed by said Manufacturers Railway Company.

(10) Complainants further allege that the only reason assigned or given by the defendants or any of them for their said action in so making said tariff changes, effective March 1, 1910, is the groundless fear or doubt as to whether the allowances or divisions previously made to or with said Manufacturers Railway Company for service rendered by it are legal or reasonable, and that none of said defendants has ever claimed or charged that said Manufacturers Railway Company did not furnish a reasonable or satisfactory through route from all points upon its lines of railway to points upon or beyond the said lines of railway of said defendants or any or either of them.

(11) Complainants further allege that the said through and joint rates and through routes established by the said defendants with said complainant, Manufacturers Railway Company, by the tariffs in effect

prior to said first day of March, 1910, were reasonable and lawful and necessary for the conduct of the business of said Manufacturers Railway Company and for the transportation of freight from the industries located upon, along or near its lines of railway, and that there is no other reasonable or satisfactory through route from or to such industries located on or near the lines of said Manufacturers Railway Company for shipments to or from points on said other lines of railroad.

(12) Complainants further allege that the said Manufacturers Railway Company as to material purchased by it and which is transported to said City of St. Louis over the lines of any of said defendants, and as to the goods and merchandise transported for any or all industries, persons, companies, firms or corporations located upon or along the lines of said Manufacturers Railway Company over its said lines and over the lines of any of said defendants, renders a service connected with such transportation and furnishes instrumentalities used therein, for which service and instrumentalities so rendered or furnished the said Manufacturers Railway Company is entitled to a just and reasonable charge and allowance to be paid by the said defendant or defendants for which said service is rendered or said instrumentality furnished as provided in Section 15 of said Act to Regulate Commerce.

(13) Complainants further allege that the said Manufacturers Railway Company is not a "tap line" or industrial railroad, but is a common carrier as such term is defined and used in the Act to Regulate Commerce and in the acts amendatory thereof or supplemental thereto, and that it is actually engaged in the

business of a common carrier of goods and merchandise from points in the City of St. Louis, State of Missouri, to points in other states and territories of the United States and foreign countries, and is a common carrier of goods transported from such other states, territories and foreign countries to points in the City of St. Louis in said State of Missouri, and is entitled to said through routes and joint or through rates as allowed by said tariffs in effect prior to the first day of March, 1910.

Complaints further allege that said Manufacturers Railway Company is organized under and by virtue of Article II of Chapter 21 of the Revised Statutes of the State of Missouri of 1879, now known as Article II of Chapter 12 of the Revised Statutes of the State of Missouri of 1899, being an act of the General Assembly of said State of Missouri for the incorporation of railroads as common carriers for public use in the conveyance of persons and property with all the powers of a common carrier engaged in the transportation of persons and property, among such powers being the power to exercise the right of eminent domain; that said Manufacturers Railway Company has been granted several franchises by the Municipal Assembly of the City of St. Louis which could only be granted to a railroad company duly organized and doing business as a common carrier, and that several of said ordinances were granted upon the express provision and condition that the said Manufacturers Railway Company should perform the duties of a common carrier of freight for the citizens of and industries located within the City of St. Louis, Missouri, and the City of East St. Louis, in the State of Illinois.

Complainants further show that the said Manufactur-

ers Railway Company is being taxed by the State of Missouri in the manner required by the laws of said state for the taxation of franchises and property owned and enjoyed by railroad corporations organized under the laws of said state and doing business therein as common carriers, which method of assessment of such franchises and property was and is different from the method of assessment prescribed by said laws for the property of corporations located in said state other than common carriers.

(14) Complainants further allege that the said Manufacturers Railway Company has filed and is filing all of the reports required by the Act to Regulate Commerce with the Interstate Commerce Commission, and is performing all of the acts required of a common carrier by said Act to Regulate Commerce, and keeps its accounts in accordance with the uniform system of accounts prescribed by the Interstate Commerce Commission for carriers engaged or participating in interstate commerce, and that all of the tariffs effective over the lines of said railroad of said Manufacturers Railway Company are duly published and filed and are now on file with the said Interstate Commerce Commission, as in said Act to Regulate Commerce is provided.

(15) Complainants further allege that the refusal of said defendant companies and each of them to longer continue said through routes and through or joint rates and in cancelling said through routes and through or joint rates is unjust, unreasonable and unlawful, to the great loss and damage of said complainants and others similarly situated, and that such action constitutes an unjust and unlawful discrimination as between the industries and shippers located

upon, along or near the lines of railroad of said Manufacturers Railway Company and other industries and shippers in said City of St. Louis, State of Missouri.

That such tariff changes subject complainants and all other industries, persons, companies, firms and corporations shipping or desiring to ship goods or merchandise over the lines of said Manufacturers Railway Company and thence over said other lines, and also subject the locality in which the lines of railway of said Manufacturers Railway Company are located and the particular description of traffic so shipped over the lines of said Manufacturers Railway Company and thence over said other lines of railway, to undue and unreasonable prejudices and disadvantages and give undue and unreasonable preferences and advantages to other industries, persons, companies, firms, corporations and localities and to the particular description of traffic shipped by such other industries, persons, companies, firms and corporations and to such other localities contrary to and in violation of the terms and provisions of Section 3 of said Act to Regulate Commerce.

Wherefore, the complainants pray that the defendants and each and all of them be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendants and each of them to establish or re-establish through routes and through or joint rates over their lines and the lines of the complainant, Manufacturers Railway Company, as the same existed prior to the first day of March, 1910, and to cease and desist from longer refusing to establish or re-establish said through routes and said through or joint rates, and that it be determined herein what shall be the proper

and reasonable division of said through or joint rates for the transportation of such goods and merchandise over the lines of railroad of said complainant, Manufacturers Railway Company, and each of said defendants, and that the defendants be ordered and required to establish or re-establish and maintain for the period of two years from the date of the order herein the said through routes and through or joint rates as the same existed prior to said first day of March, 1910, and that due reparation be awarded to said complainants and each of them, and for such other and further order or relief as the Commission may deem necessary in the premises.

Dated at St. Louis, Missouri, this second day of March, A. D. 1910.

Manufacturers Railway Company,
Anheuser-Busch Brewing Association,
Stecher Cooperage Works,
Independent Breweries Company,
Bradbury Marble Company,
St. Louis Basket & Box Company,
Fidel Ganahl Lumber Company,
St. Louis Cooperage Company, and
Western Foundry & Sash Weight Company,

By.....

Their Attorneys.

St. Louis, Missouri.

Chicago, Illinois,

St. Louis, Missouri,
Attorneys for Complainants.

Page 350 **Mr. Andrews.** We offer in evidence a copy of the Answer of the St. Louis Southwestern Railway Company filed in the above entitled cause before the Commission.

The Answer last above referred to is in the words and figures as follows, to-wit; omitting caption and signatures:

ANSWER OF DEFENDANT ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

Comes now on this day the St. Louis Southwestern Railway Company, one of the defendants in the above cause, and for answer to complaint herein states:

I.

It admits the allegations in paragraph one of the complaint.

II.

It has not sufficient information to either admit or deny the allegations in paragraph two of the complaint, so therefore requests proof thereof.

III.

This defendant is a common carrier engaged in interstate commerce and subject to the Act to Regulate Commerce.

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IV.

It has not information sufficient to enable it to deny or admit the allegations in paragraph four and if said allegations are material, requests proofs thereof.

V.

Defendant admits that prior to March 1, 1910, it had

in effect the tariff and supplement mentioned in subdivision "R" of this paragraph.

VI.

Defendant gave notice in accordance with the law that on March 1, 1910, its said tariff would be cancelled and no allowance therefor would be made to the Manufacturers Railway Company, but denies that said notice was mailed as a result of any conspiracy, confederation and combination as alleged in said paragraph, in violation of the Sherman Anti-Trust Act.

VII.

Defendant says that under the aforementioned tariff which was cancelled, there was no through route and said tariff did not provide for joint rates, but merely provided for certain allowances to the Manufacturers Railway Company, and denies the allegations in paragraph seven and says that the shippers mentioned in the complaint have a through route from their plant to any point reached over the lines of this defendant.

VIII.

Defendant denies the allegations in paragraph eight of the complaint.

IX.

Defendant denies the allegations in paragraph nine of the complaint.

X.

The defendant denies the allegations in paragraph ten of the complaint and says that it cancelled the said tariff for the reason that it was advised that the allowances that it heretofore made to the Manufacturers'
Page 352 Railway Company were illegal, and not permitted under the law for the reason that it was advised, believed and still believes that the Manufacturers Railway

Company is merely an industrial or tap line, and, under the law, not entitled to any part of the through rate from or with this defendant.

XI.

Defendant denies the allegations in paragraph eleven of the complaint.

XII.

Defendant denies the allegations in paragraph twelve of the complaint, and further answering says that if the Manufacturers Railway Company is entitled to compensation as a carrier, it is not entitled to receive from this defendant any allowance of the through rate.

XIII.

Defendant says that the Manufacturers Railway Company may be organized as a common carrier as therein alleged, but denies that it is entitled to an allowance; but if so, it is not entitled to the allowance heretofore paid to it under the tariff cancelled, and otherwise denies each and every allegation in paragraph thirteen contained.

XIV.

This defendant has not sufficient information to affirm or deny the allegations in paragraph fourteen, and therefore requests proof thereof.

XV.

Defendant denies each and every allegation in paragraph fifteen of the complaint contained.

Further answering, defendant says that it denies each and every allegation of the complaint contained except those specifically admitted herein and that it cancelled the said tariff and arrangements because it believed that the same were unlawful as aforesaid, and

if not unlawful, that the allowance given to the Manufacturers Railway Company was unreasonable, excessive and unjust.

Page 353 Wherefore defendant having fully answered, prays that the complaint may be dismissed, etc.

St. Louis, Mo., March 24, 1910."

Note: It is agreed by counsel that copies of the answers of the other defendant railroads in said case need not be incorporated in this record; that either side may include in the record such parts of the answers of other defendants as either party may desire to offer in evidence.

In lieu of abstracting all of said other answers, the following summary thereof as contained in the first report of the Commission (page 307), is here copied as a correct statement of the issues made by said answers:

"Some of the defendants deny that complainant, Manufacturers Railway Company, is a common carrier engaged in interstate commerce, or that through routes and joint rates existed prior to March 1, 1910; and allege that the tariff referred to in the petition merely provide for absorption of switching charges of the Manufacturers Railway Company, except as to tariffs on bituminous coal, which gave it a division of the rate; that other satisfactory and reasonable through routes and joint rates now exist for the traffic of complainants. In the answers of several defendants they say that they neither admit nor deny the allegations of complaint, but in view of the decision of the Commission in certain cases, especially Star Grain & Lumber Co. v. A. T. &. S. F. Ry. Co., 17 I. C. C. Rep., 338, they submit the question as to whether complainant carrier is an industrial or tap line, or is a common carrier and entitled to through routes and joint rates, and whether the further payment of allowances to complainant carrier is lawful or reasonable, to the judgment and determination of the Commission The answer of one defendant asserts that it had no doubt as to the legality and reasonable-

ness of its allowances to the Manufacturers Railway Company previous to the date of the decision above referred to, but in view of that decision has fears and doubts as to their legality since said decision. The answers of other defendants deny generally the allegations of complaint. The Iron Mountain avers that the Manufacturers Railway Company was organized and its tracks constructed to serve the Anheuser-Busch Brewing Association alone, and that it is and always has been owned and controlled by the same interests that own and control the Brewing Association; that it handles practically no traffic except for the Anheuser-Busch Brewing Association, and that the services of complainant carrier involve the switching of cars between industrial establishments reached by its tracks to the tracks of the Iron Mountain and the St. Louis Transfer Company, and is exclusively a switching service."

Counsel for complainants offer in evidence the rest of the record in said cause before the Commission including four volumes of testimony taken before the Interstate Commerce Commission, which volumes, by consent, will be received subject to correction as to any inaccuracies; and subject, further, to the addition of any exhibits that either side may desire to have considered by the Court in connection with the testimony contained in said volumes; the formal certification of the record before the Commission being waived.

Gov. Folk: It is the contention of counsel for the United States and the Interstate Commerce Commission, that in a proceeding to annul an order of the Interstate Commerce Commission the Court has no lawful authority to consider any evidence other than the
age 354 record of the testimony in the proceeding before the Commission, and counsel move to strike out from this record all evidence except the record of the evidence and proceedings before the Interstate Commerce Com-

mission, which record of testimony and proceedings before the Interstate Commerce Commission includes the findings and orders of the Commission.

In support of the said motion to strike out the said evidence, counsel for the respondents serve notice upon counsel for the complainants that the counsel for respondents will urge the same objection which they made at the time the testimony was offered, and before the same was received, at the beginning of this hearing; and the counsel give notice that they will urge the further objection that the evidence taken consists of matters and things heard and determined by and before the Commission, based upon substantial evidence, and that the findings of the Interstate Commerce Commission thereon are conclusive; and that the said evidence is also cumulative and consists of repetition of the testimony considered by the Interstate Commerce Commission in making its findings and orders as aforesaid.

Mr. Haid: I want the record to show that in order to prove the allegations contained in the eighth paragraph of the petition in case No. 4384, the Manufacturers Railway Company and the St. Louis Southwestern Railway Company versus the United States, that on behalf of the St. Louis Southwestern Railway
Page 355 I wrote to the Secretary of the Interstate Commerce Commission on two occasions, asking that he prepare and send to me, at the expense of the St. Louis Southwestern Railway, a full certified copy of the record in the proceedings known as "Investigation and Suspension Docket No. 355," and that both of my letters were wholly ignored by the Secretary of the Interstate Commerce Commission. I then wrote two, or possibly three, letters to Governor Folk, urging that he have

the Secretary of the Commission furnish the necessary information, and received from him each time the technical reply that Investigation and Suspension Docket No. 355 is a part of I. C. C. Docket No. 3151, although and notwithstanding it is our contention that there has never been any consolidation of the two cases; and one of the purposes which we had in view in procuring and introducing in this case a copy of the record in Investigation and Suspension Docket No. 355, was to show that there had never been any consolidation of the two cases; that there had never been any hearing had before the Commission, Examiner, attorney examiner, or other representatives of the Commission, with reference to the suspension of the tariffs covered by Investigation and Suspension Docket No. 355, nor has there ever been a hearing in connection therewith, as is alleged in sub-paragraph seven of paragraph eight.

Therefore, I now serve notice upon counsel for the Interstate Commerce Commission and for the United States that I will make application to the Court in
age 356 which this case is pending for a subpoena *duces tecum* to compel the production of that record at the hearing of this cause, unless, in response to a letter which I have recently written to Commissioner Clements, he shall succeed in procuring for me the necessary certified copy of the record.

Gov. Folk: The record in I. & S. No. 355 is the record in Docket No. 3151, Docket 3151 being a proceeding brought by the Manufacturers Railway Company against the St. Louis Southwestern Railway Company, and other carriers, asking the Interstate Commerce Commission to order said St. Louis Southwestern Railway Company, and other carriers to estab-

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lish rates to the points along the line of the Manufacturers Railway at the St. Louis rates, and to make allowances to said Manufacturers Railway Company of $4.50 per car.

While said proceeding, Docket No. 3151, was pending and undetermined before the Interstate Commerce Commission the St. Louis Southwestern Railway, in an effort to pre-determine said cause, and to decide the same for itself, filed a tariff whereby it proposed to make an allowance to said Manufacturers Railway Company of $4.50 per car.

Whether such an allowance may lawfully be made was the question before the Interstate Commerce Commission in Docket No. 3151, to which the St. Louis Southwestern Railway Company was a party; and the hearing in Docket No. 3151 included the hearing regarding the suspension of the tariff filed by said St. Louis Southwestern Railway Company, and designated as I. & S. No. 355.

Page 357 Counsel for the St. Louis Southwestern Railway Company can procure, by writing to the Secretary of the Interstate Commerce Commission, the record in I. & S. No. 355, the same being the record in Docket No. 3151.

The letters written by the counsel for the St. Louis Southwestern Railway Company were answered and he has been informed many times that the record in I. & S. No. 355 is the record in Docket No. 3151, which record he can procure at any time he may desire it, by paying the customary fees therefor.

Mr. Haid: The record in I. C. C., Docket No. 3151, will show clearly and beyond any question, that the tariff suspended in Investigation & Suspension Docket No. 355, was filed after the last hearing was had in

I. C. C., No. 3151, and all of the orders of the Commission, both those suspending the tariff and the final order, were made subsequent to the last hearing in I. C. C., Docket No. 3151. Therefore, I. C. C., Docket No. 3151, could not possibly make any reference to the matters under investigation in I. & S. No. 355.

Answering Governor Folk's statement to the effect that the filing of the tariff of the St. Louis Southwestern Railway Company, involved in Investigation and Suspension Docket No. 355, I desire to say that in its original opinion, as will appear clearly from the record introduced in this case, the Commission thought it proper at that time for the trunk lines to absorb the charges of the Manufacturers Railway Company. The subsequent proceedings before the Commission, as will clearly appear from the opinions of the Commission,
age 358 were to establish through routes and joint rates, and the Commission only held in its second opinion that it neither had the power to establish through routes and joint rates, nor to compel the trunk lines to absorb the charges of the Manufacturers Railway Company.

Therefore, at the time the tariff of the St. Louis Southwestern Railway Company in question was filed, it was in full accord with the opinions of the Interstate Commerce Commission, and there was nothing in the order of the Commission prohibiting the practice contained in that tariff.

Gov. Folk: All statements by counsel for the St. Louis Southwestern Railway Company, inconsistent with the findings of the Interstate Commerce Commission and the record in Docket No. 3151, to which the St. Louis Southwestern Railway Company was a party, are objected to, and I move to strike his statement from the record as irrelevant and immaterial.

Mr. Esterline: Counsel for the St. Louis Southwestern Railway Company is associated with counsel for the Manufacturers Railway Company, the two Companies having filed a joint petition before this Court; the petitioners having offered the record of the evidence and proceedings before the Interstate Commerce Commission as the record of evidence and proceedings on which the order of the Interstate Commerce Commission is based, the counsel for the St. Louis Southwestern Railway Company is now estopped to raise any question of any other or different record before the Interstate Commerce Commission upon which the order was based.

Page 359 I make the further objection that the suggestion comes too late, as due notice has been given of this hearing, which is now closed.

Mr. Haid: Replying first to the last statement of counsel for the United States, I desire to say that no notice whatever of this hearing has been served upon the counsel for the St. Louis Southwestern Railway Company, and I only learned of it by telephone from Mr. Andrews on Saturday last.

Answering now the first part of counsel's statement, I desire to say that the St. Louis Southwestern Railway has in no way participated in the introduction of any testimony at this hearing except insofar as an employe of the St. Louis Southwestern Railway Company testified as a witness for the Manufacturers Railway Company, for the purpose only of identifying the provisions of certain tariffs which have been brought in question, and because of my familiarity with those tariffs, and with the witness, I acted as counsel in his examination.

The St. Louis Southwestern Railway Company has

not participated in this proceeding further than to join in the complaint with the Manufacturers Railway Company, each having a common cause of complaint; that of the Manufacturers Railway Company being with reference to the opinions and order of the Interstate Commerce Commission in I. C. C., Docket No. 3151, and that of the St. Louis Southwestern Railway Company being with reference to the orders of the Commission in Investigation and Suspension Docket No. 355, its complaint being that its tariff has been suspended and ordered cancelled without its having
ge 360 been given an opportunity to be heard so as to justify its action in incorporating in that tariff provisions which it deems wholly proper and legal.

Gov. Folk: The contention of counsel amounts to this: The St. Louis Southwestern Railway Company, a party, with other carriers, to the proceeding known as Docket No. 3151, could by its act of filing tariffs whereby it proposed to make an allowance to the Manufacturers Railway Company of $4.50 per car, prejudge the very matter then under consideration by the Interstate Commerce Commission. There were a large number of carrier defendants in said cause Docket No. 3151, and if each carrier had filed tariffs presuming to judge for itself, as the St. Louis Southwestern Railway Company attempted to pre-judge said cause for itself, then if the Interstate Commerce Commission were compelled to have separate and distinct hearings in each matter of tariffs so filed, said cause would have been split up into a large number of other causes, and it would have been impossible for the Interstate Commerce Commission to have heard the original cause to which they were all parties, and which involved the

very matters affected by the tariffs filed by them, as aforesaid.

As a part of the record in said proceeding before the Commission, there are here printed a copy of the Petitions for Rehearing filed therein by the Manufacturers Railway Company, and by the complaining shippers respectively, as follows:

Separate Application of Manufacturers Railway Company for Rehearing.

Now comes the complainant, Manufacturers Railway Company, and prays the Honorable Interstate Commerce Commission to grant a rehearing in the above entitled cause, and for grounds of this application respectfully shows:

I. There was no intimation in the first opinion of the Commission in this case, that the Commission would upon the supplemental hearing, re-open, reconsider or re-decide the questions of law and fact which had already been decided by it, as evidenced by its first opinion.

No order had been made re-opening the case upon the conclusions of law and fact there announced. On the contrary, we are informed that a request of the Louisville & Nashville Railroad to have the case reopened, was denied.

The questions specified in the first opinion, as still open for consideration and determination were clearly defined therein, and were expressly limited to the following subject-matter (23 I. C. C. R., p. 316).

"The record before us does not present a sufficient

basis for a satisfactory determination of the question as to the reasonable and just division or allowance to the complainant carrier and the further question as to whether a part of the services performed by it is or is not plant-facility service within the principles enunciated in the cases above referred to. Respecting these questions further investigation by the Commission will be made.

The original record contains statements from defendants to the effect that should the Commission sustain the legality of the divisions or absorptions, reparation should be awarded on the basis of the reasonable allowances determined upon by the Commission. When after further hearing and examination the proper amounts have been ascertained reparation will be awarded on the basis of our final action respecting divisions or allowances."

Consequently, both the evidence introduced for complainants upon the supplemental hearing, and the presentation of their case in briefs, were in the main likewise limited, and the propriety of the first decision was dealt with merely as incidental to the questions reserved.

Thus, in our principal brief upon the supplemental hearing, we said (pages 3 and 4):

"We assumed at the supplemental hearings, and respectfully contend, that the points which have already been decided in this case are not open for further discussion or for reconsideration or review before the Commission, but since it is the declared purpose of the defendant, Louisville & Nashville Railroad, to endeavor to re-open the entire case, we shall treat the supplemental evidence relating to points already decided

to the extent only of showing that it fully and firmly supports the conclusions already reached.

Since this brief is supplemental to the former briefs for complainants, no statement of the pleadings will be repeated here, but this brief will be devoted chiefly to the questions now before the Commission for decision, to-wit:

1. What part of the service of complainant carrier, if any, is plant facility?

2. What will be a reasonable allowance to the complainant carrier?

3. What is the amount of reparation due the complainant carrier?"

And in our reply brief at the supplemental hearing we said (page 6):

"We respectfully renew our contention that **the points already decided** in this case are **not open for further discussion or review** before the Commission, and we repeat our purpose of attempting to limit this reply to those matters which are now open for discussion, pausing only to note and correct certain inaccuracies in the defendant's brief."

In the argument of the case, also, upon the supplemental hearing, complainants' counsel proceeded upon the assumption that what the Commission had decided, was not open for review, and there was no intimation by the Commission that it would without notice to the parties, and without an order re-opening that part of the case, re-consider and re-decide the questions which it had already decided.

The complainants, therefore, upon receiving copies

of the second opinion early in August, 1913, were confronted by the unexpected result that the Commission had in fact thus re-opened, re-considered and re-decided all of the questions of fact and law which had been decided in its first opinion.

Therefore, we now respectfully submit that we are entitled to an opportunity to be heard upon all of the questions decided by the Commission in its second opinion which were not among those expressly reserved for decision by its first opinion—and, inasmuch as those which were so reserved, are vitally related to the others, that the entire case should be re-heard, reconsidered and re-decided.

II. It is beyond the jurisdictional power of the Commission, to deny to any railway corporation, which is a common carrier at law, and which in fact maintains toward a shipping public the attitude of being a common carrier, any of the rights or remedies of common carriers subject to the Act to Regulate Commerce.

In the case at bar, although the Manufacturers Railway Company is held to be a common carrier, the decision denies it:

(a) The right to agree with other carriers for a division of joint rates to and from St. Louis for transportation services rendered by it in the movement of freight in Interstate Commerce;

(b) The right to agree with other carriers for an absorption by them of a reasonable charge for switching services rendered by it in the movement of freight in Interstate Commerce to and from St. Louis;

(c) The right to be shielded from undue discrimination against it and in favor of other competing common carriers, in that competing carriers performing termi-

nal services are held entitled to be paid therefor out of the St. Louis rate, whereas this carrier, having equal rights under the law with its said competitors, is held not so entitled;

(d) The right to reparation for damages sustained by it for violations of the Act by the defendant carriers.

III. That certain findings of fact and conclusions of law contained in the decision, opinion or report of the Commission, dated June 21st, 1913 (served in August, 1913), were and are erroneous, for the respective reasons and upon the respective grounds hereinafter stated as to each.

IV. That said decision should be reversed and modified on account of consequences which would result from compliance with said decision, all as hereinafter set forth, which consequences justify, and in the interest of justice require, a reconsideration of the case.

III. Specification of findings and conclusions claimed to be erroneous, with statement in each instance of grounds of error.

We respectfully submit that the following conclusions of law and findings of fact embodied in the second opinion or decision of the Commission were and are erroneous for the respective reasons, and upon the grounds now to be stated in respect of each:

1. **The nature of this case.**

On pages 108 and 109 of the second opinion, the Commission says:

"We should not confuse the nature of this proceeding. This **is not a case** in which there is **a blanket rate over a wide territory**, such as in the lumber tap-line cases, and in which the trunk lines are willing to make absorptions or divisions out of their own rates and the

only duty of the Commission is to see to it that such payments by the trunk lines are not overdone and in effect rebates to the industry through the railway."

And on page 109: "**It is**, on the contrary, one in which the trunk lines are, **on this record at least, resisting the demands** of a connecting common carrier and its shippers for an order that would **materially diminish their revenues** and in which the Commission is asked to make an affirmative order which **would have that effect.** It is manifest that **we cannot consistently or lawfully do this.**"

And on pages 110 and 111: "As heretofore shown, the prayer of the petition is for the establishment or **re-establishment** of **'through routes and through or joint rates as the same existed prior to March 1, 1910,'** which means the establishment or re-establishment of the St. Louis rate with the previous absorptions. It is apparent from the foregoing findings that the prayer of the petition cannot be upheld to that extent.

"We have, in other words, dealt with this case as presented **by the pleadings** and at the hearings, **upon the understanding** that the trunk lines **are resisting the demands of the railway** and its shippers and in accordance with what we conceive to be our duty and limitations in the making of joint rates **by affirmative order.**"

The foregoing findings and conclusions are erroneous in that:

(a) This **is** a case (upon the record at the supplemental hearing), "in which there **are blanket rates over a wide territory,**" viz.: throughout the extensive territory included within the switching limits of St. Louis and East St. Louis, throughout which the St. Louis rate applies to include the spotting of cars to

industries; and it is a case "in which the trunk lines **are willing to make absorptions or divisions out of their own rates,** and the only duty of the Commission is to see to it that such payments by the trunk lines are not overdone," etc.

The fact that the trunk lines are willing to make such absorptions or divisions was shown by their having done so, by filing new tariffs even before the first decision (see page 315 of the first opinion), and by their having continued these tariffs in force until after the second decision, which pronounced them unlawful.

Even the Louisville & Nashville Railroad Company (the only defendant which made an active defense at the supplemental hearing) continued in practice its attitude of willingness to make such absorptions and allowances, although upon the record questioning their lawfulness.

(b) The Commission, although not a court, has in its second opinion dealt with this case upon a strict and technical construction of the petition, and in doing so has, contrary to the rules of pleading, permitted the form of the prayer for relief to control over the facts stated in the petition (see also pages 100 and 101 of the second opinion); it has also considered and decided the case strictly upon the issues framed by the pleadings, although the record before it showed that in substantial respects not only the law but the attitude and situation of the parties had changed since the filing of the petition, and that notwithstanding such changes a liberal construction of the pleadings as interpreted by the briefs, disclosed the nature of the relief sought in view of the changed conditions, and that such relief could and should have been granted.

When the petition was filed, the right of complainants under the Act, to a compulsory establishment of

through routes with joint rates was predicated in part upon proof that "no other reasonable and satisfactory through" route existed.

That condition was removed from the law prior to the first decision.

When the petition was filed, none of the defendant lines were willing to **voluntarily** grant divisions and allowances out of the St. Louis rate.

When the second decision was rendered all of them were not only **willing,** but were in fact doing so, and the record disclosed the fact. So that when the second decision was rendered the allowances and absorptions then being paid by the defendant lines fell strictly within the class held even by the second opinion to be lawful, viz.: those voluntarily paid by the lines to cover terminal services "performed for the trunk lines." And yet the Commission held them unlawful, and therein erred, as the result of which all the lines have cancelled them.

The opinion **should have informed** the lines that the voluntary absorptions and allowances being paid by them were lawful, if not excessive in amount.

The opinion failed to distinguish between the facts alleged and proved and the relief appropriate thereto, in respect of "the period of reparation,"—and the facts of record and relief appropriate thereto, in respect of the conditions existing when the record was closed and the decision made.

As to the reparation period, the relief sought, whether in form it be expressed in terms of "establishing joint rates and prescribing divisions thereof," or of "ordering the defendants to cease and desist from causing unjust discriminations" against the complaining carrier and shippers on its line,—was in effect to

cause and **permit** the defendant lines to **resume their long established practice** of handling shipments at the St. Louis rate, and **to award reparation** for its wrongful discontinuance.

As of the date when the second opinion was rendered, the relief sought, was in effect, to **permit** the defendant lines to **continue** the said practice theretofore **voluntarily resumed by them**, of handling shipments at the St. Louis rate, to advise them that a discontinuance of that practice as to complainants, while continuing it as to their competitors on other lines in St. Louis, would create unjust discrimination against the complainant carrier and the shippers—and to award reparation for the reparation period.

In substance, the foregoing appeared from the averments of the petition, as supported by the proofs and briefs. (See testimony of Busch, original record page 181; complainants' principal brief on original hearing, page 226; complainants' reply brief on original hearing, pages 6, 14; complainants' principal brief on supplemental hearing, page 57; and complainants' reply brief on supplemental hearing, page 73.)

2. **Reciprocal switching relations:**

On pages 103 to 105 of the second opinion, in considering the question of discrimination, the Commission discusses the fact that it is the practice of the trunk lines to absorb the switching charges (for terminal services) of the Terminal Railroad Association, and of its subsidiaries operating as separate corporations, and also to absorb those of other line carriers rendering terminal service in St. Louis, and in effect holds that the Manufacturers Railway Company is not entitled, for its own and its shippers' protection, to enjoy like absorptions, because of the facts (a) that the Terminal and its subsidiaries are owned by the trunk lines and

therefore should not be treated as separate carriers or competitors of the complainant carrier, and (b) that the trunk lines have reciprocal switching relations to offer each other, whereas the Manufacturers Railway, having no line haul, cannot offer reciprocal switching relations.

In stating its conclusions upon this point the Commission says (second opinion, page 105):

"In this connection it may be argued by complainant that the Terminal Association is **a separate corporation** from **the trunk lines.** This is true. But it is also true that intermingled **with the lines** controlled by it as a separate corporation are included in the same reciprocal arrangement **certain terminal lines owned or controlled by its proprietary or tenant lines direct,** as is the **Wiggins Ferry Company,** as well as the various terminal properties **of the individual trunk lines themselves,** all **of which together constitute the united terminals of all the trunk lines entering the city.** There is therefore here presented **a different situation** from that which **would be presented** if we had under consideration **two or more independent terminal systems in St. Louis, and the trunk lines absorbing the charge of one** or some of them and refusing **contemporaneously** to **absorb the charge of the others under like conditions.**"

The result is that the opinion denies to the Manufacturers Railway rights and privileges which it at the same time accords to competing common carriers, and solely because of the alleged distinction in respect of reciprocal switching relations.

We respectfully submit that the above conclusions are erroneous in that:

(a) The Commission has no power under the Act to deny to a common carrier the right to arrange for or

receive absorptions because it has no reciprocal switching relations with the lines granting them. The Act neither makes nor permits any such classification of carriers, nor any such discrimination between carriers.

(b) The Commission has no power to ignore the separate operating corporate entity of the Terminal Railroad Association and of its respective subsidiaries, or to treat them as part of the trunk lines rather than as separate terminal carriers, in considering questions of rates or discrimination. To do so was contrary to the ruling of the Supreme Court in the case of I. C. C. v. Stickney, 215 U. S. 98, at 108, where the Court said:

"The Union Stock Yards Company is an independent corporation, and **the fact**, if it be a fact, **that** most or even **all of its stock is owned by the several railroad companies entering into Chicago, does not make its lines or property part of the lines or property of the separate railroad companies.**"

(c) The attempted distinction in respect of the existence or non-existence of reciprocal switching relations, is not sound in fact or theory as shown by the record (and by complainants' principal brief on supplemental hearing, pp. 108-114, 123).

Even if the Commission had had power to make such a classification of or discrimination between carriers, such distinction should not have been made in the case at bar.

(d) The Commission erred in concluding that "there is therefore here presented a different situation from that which would be presented if we had under consideration two or more independent terminal systems in St. Louis, and the trunk lines absorbing the charge of some of them and refusing contemporaneously to absorb the charge of others under like conditions."

We respectfully contend that the situation presented in the case at bar is not "different" but is **substantially the same** as that above stated.

Even if the Commission had had the power to hold and had correctly held that the Terminal and its subsidiaries should be treated as a part of the line of each proprietary carrier, that would not justify a like conclusion in respect of the trunk lines which have their own terminals in St. Louis, which are operated independently of the Terminal.

Thus, the Iron Mountain's terminal facilities operated in South St. Louis in competition with the Manufacturers Railway, constitute no part of the Terminal Railroad's unit system of terminals, and the other trunk lines have no interest in them. They use them just as they use the facilities of the Manufacturers Railway Company.

Therefore, it is clearly discriminatory against the Manufacturers Railway and its shippers to permit the trunk lines to absorb the switching charges of the Iron Mountain, while refusing to permit them to absorb those of its competitor, the Manufacturers Railway Company.

Again, the Terminal is not owned by **all** of the St. Louis lines. There are a number of lines, not proprietors of the Terminal, which granted allowances to the Manufacturers Railway. The Terminal is not a part of their lines and **should not have been so considered.**

3. **"Voluntary" as distinguished from "prescribed" absorptions or divisions; and for which, shipper or trunk lines, are terminal interchange services rendered?**

On page 105, second opinion, is the following finding or conclusion:

"We have carefully considered the evidence as presented by the combined record and, considering all the facts, circumstances, and conditions as now appearing, it is our conclusion, and we so find, * * * that **the payments formerly made out of their through rates by the trunk lines** to the railway were **absorptions** in **compensation for services rendered to the trunk lines** and **were in no sense divisions of joint rates** as for services rendered **for the shippers served by the railway,** as **they would be considered to be under joint rates prescribed by order of this Commission.**"

And on page 103: "We are not to be understood as saying that when carriers in the through route under their tariffs absorb the switching charge of a terminal line, the resulting rates are not to all intents and purposes, and in fact, **joint rates so far as concerns the shipping public.** What we do say is that while the trunk lines **may thus voluntarily** establish such rates on that basis, **we would not be justified in requiring them to do so.**

"There is, therefore, we think, in legal effect a well defined distinction between **an absorption** which may be made by a trunk line **voluntarily** and the **division of the joint rate** which may by lawful order be **prescribed** by this Commission. This being so, it follows that there is also in legal contemplation a well defined distinction between **the character of the services** rendered by the railway **under the absorption tariffs** of the trunk lines **formerly in effect,** and **the same services under the joint rate which could by lawful order be prescribed by this Commission.**"

Without attempting to brief any proposition, and merely for the purpose of stating clearly the reasons or grounds upon which we respectfully contend that the present attitude and conclusions of the Commis-

sion upon the foregoing subject matter are erroneous, we first shall state our contentions concerning the right of complainants and the power and duty of the Commission to grant relief in respect of them.

We respectfully contend:

A. That there is no essential distinction between an "absorption" and a "division" as applied to a participation in a through and joint rate. The difference is one of name or accounting method only. In each case it represents a share of the revenue resulting from the St. Louis rate, whether that share be provided for in and by what are called "division sheets," or in and by what are called "tariff absorptions of terminal service charges"; and whether it be expressed in a fixed proportion of the entire rate or on a flat basis of so much per car.

B. That the amended Act, at the time of the decision, gave the complainants each of the following rights, and made it the duty of the Commission to recognize and enforce them, with adequate powers to do so, viz.:

To have **established** by the Commission "through routes * * * and joint rates as the maximum to be charged," and to have **prescribed** by the Commission, "the **division of such rates** * * * and the terms and **conditions under which such rates shall be operated.**" (Section 15.)

To have determined by the Commission whether "any individual or joint rates or charges, * * * or any **individual** or **joint** regulations or **practices** whatsoever of such carriers * * * are **unjustly** or **unreasonably discriminatory**, or **unduly preferential** or **prejudical** or otherwise in violation of the * * * Act,"—and if they are, then to have the Commission **prescribe** "what shall be the just and reasonable individual or **joint rate** charge or charges to be thereafter absorbed in such

case as the maximum to be charged, and what individual or joint classification, regulation or practice is just, fair and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and * * * shall conform to and observe the regulations or practice so prescribed." (Section 15.)

To have enforced the provision that: "Every common carrier * * * shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines * * * and shall not discriminate in their rates and charges between such connecting lines." (Section 3.)

C. That under the Act, as above quoted, the Commission could and should have permitted and required the St. Louis lines to continue the practice of paying to the Manufacturers Railway Company a part of the St. Louis rate, so long as the general practice of all carriers continued in force to treat industrial spur tracks in St. Louis as points of origin and destination for interstate shipments. And this, upon either of two grounds, each of which was supported by the facts pleaded and proved; whether expressed with technical accuracy in the prayer for relief or not, viz.: (1) That the service of the railway, being part of the transportation of property moving in Interstate Commerce, the Railway and its shippers were entitled to have such freight moved under a joint rate to be established by the Commission (if the carriers did not voluntarily establish it); and the Railway was entitled to have the Commission prescribe the division of that rate (if the carriers did not agree), and the conditions under which it should be made effective.

In the enforcement of that right the Commission might and should have adopted either the form of **"establishing a joint rate, and prescribing its divisions,"** —or the form of "prescribing a practice of absorbing terminal charges." In either case the substance would have been identical, viz.: Shippers upon the Railway would have procured through and joint rates (the St. Louis rates), to and from their spur tracks on the Railway, and the Railway would have procured a portion of the St. Louis rate to compensate for its portion of the interstate transportation service.

The only essential to the existence of that right upon the above ground, is that **the character of the service rendered by the Railway** be **a part of the act of transporting** the freight over **the through route.**

If and when it is a part of such transportation, then the service becomes of the class referred to in the second opinion (page 101), as "performed **for the trunk line** and not for the shipper."

Then also, it becomes immaterial whether the division is **in fact voluntary** (i. e., consented to by the trunk lines), or **involuntary** (i. e., prescribed by the Commission), and adopted by the carriers because so prescribed.

In either case it is **in law consented to by the trunk lines.** In the one case (voluntary), they **expressly** consent; in the other case (involuntary), the carriers having failed to agree, the law **imposes consent** as a condition to their doing the business, and their consent **becomes** implied when they transact it.

"Consent" **implied by law,** and contract **obligations imposed by law,** are familiar things in the law. Thus in the field of commerce law, it is elementary that the element of **consent,** or express **agreement,** is the distinguishing characteristic of "a joint rate."

No rate is "joint" unless every part has been "agreed to" by the carriers. Yet the Act (Section 15) expressly provides that the Commission may establish through routes and **joint** rates, and prescribe divisions thereof, when the carriers have "refused or neglected" to establish them **voluntarily.**

Surely no one will contend, that joint rates and divisions thereof established by the Commission pursuant to the Act, are **not "joint"** because imposed against the actual wishes of the carriers.

After they have been so prescribed, the law **implies the consent** of the carriers, and they are thereafter no less **joint** in legal effect than if they had been established originally by the voluntary act of the carriers.

One more illustration: It is familiar law that a party who has contracted to convey land may be compelled by a court of equity to execute a deed. No one would contend that a deed executed under such compulsion was voluntarily made, and yet in the law, it is his voluntary act and deed, consented to by him, and it operates to convey his title exactly as though he had executed it not under legal compulsion. The fact that his consent was compelled by law does not prevent it from being a valid consent.

Just so in the case at bar, a **joint** rate **prescribed by the Commission,** when put into effect by the carriers (even though forced to do so by order of the Commission), becomes in the law a rate **consented to by them,** and it thereafter partakes of all the consequences and characteristics of a joint rate voluntarily made by them, so far as the prescribed divisions and allowances are concerned.

Therefore, we respectfully submit that there is not, either in law or fact, any essential distinction as to joint through rates between an absorption which may

be made by a trunk line voluntarily, and a division of a joint rate or allowance out of it, which may be prescribed by the Commission; and that the Commission erred in holding otherwise.

And, since the right of a common carrier to rates or divisions, is determined under the law by the **character of the service performed,** no distinction in the character of such service can be predicated upon any supposed distinction between such "voluntary absorptions" and "prescribed divisions." They are merely alternative forms in which is expressed the participation in the revenue arising out of the rate, of the carriers who engage in rendering the service of such transportation. In themselves they neither constitute nor express any distinction in the legal character **of the service.**

Therefore, while we agree with the Commission's conclusion "that the payments **formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered,**" by the railway, we do not agree, and respectfully submit that the Commission erred in holding, that such services were rendered **"for the trunk lines"**; and that it erred fundamentally in holding that such services if rendered under voluntary tariffs providing divisions or absorptions out of the St. Louis rate, would be lawfully compensated because rendered **for the trunk lines,** whereas if rendered under tariffs **prescribed** by the Commission, like divisions or absorptions thus provided would be unlawful, because the services would be rendered **for the shippers.**

We respectfully submit that the new ground thus taken in the second opinion is not tenable, and should be abandoned. It does not solve this case, nor can it aid in solving others.

As we read the distinction expressed in the above

quoted excerpts from the second opinion (pages 105, 103), the Commission has made it the turning point of the decision.

The distinction rests upon the propositions: (a) that the charges of a terminal carrier for its portion of the servise in transporting an interstate shipment cannot lawfully be absorbed by the trunk line unless the joint rate under which the freight moved, and the division of it or absorption allowance out of it, were **voluntarily agreed to** by the trunk line, as distinguished from a joint rate and division thereof **prescribed by the Commission**; (b) that in the former case, because the rate and division were **agreed** to i. e., "voluntary," therefore the service rendered by the terminal carrier is rendered for the trunk line, i. e., not only at its request but for its account, and **not for the shipper**; and therefore **may lawfully be paid for by the trunk line**; whereas, in the latter case, the rate and division being **prescribed,** not voluntarily consented to by the carriers, the terminal service cannot be regarded as rendered for the trunk line, nor lawfully to be compensated for by it, but must be regarded as rendered for the shipper, to be paid for by the shipper; and (c) that, therefore, in the case at bar, the trunk lines having cancelled their voluntary joint rates and divisions, and having (at least when the petition was filed), refused to make new ones, the Commission could not compel them to do so, because that would be compelling the trunk lines to pay for services rendered **not to them, but to shippers.**

In considering the above propositions it is necessary to remember: That the subject-matter involved is the service of transporting interstate freight over a through route, under a joint rate, established in the one case by voluntary act of the carriers, and in the other, under order of the Commission, and that the act

of transporting is performed partly by the railway (which renders terminal service in St. Louis), partly by line (and perhaps by other terminal) carriers, which render the rest of the service.

Is there any legal distinction in the two cases between either the **character of the services performed by the railway** (i. e., whether they are performed for the trunk line or the public), or in the **lawfulness** of the railways receiving compensation for its part of the transportation service, **out of the St. Louis rate?**

In each case the entire service, and, therefore, each part of it, is rendered **for the public**, i. e., the **shipper or consignee.** Each participating carrier **renders its part, for that public**, and **no part for any of the other participating carriers.**

The Manufacturers Railway, in performing its part of the service, cannot be said in either case, to serve the trunk lines any more than the trunk lines can be said to serve the Manufacturers Railway. Each severally renders its own portion of the act of through transportation, for the account and benefit of the shipper. Each receives its portion of the through rate paid by the shipper (whether such payment comes to the carrier in the form of a division or absorption, and whether from the shipper, consignee or some other carrier), in compensation for its portion of the service rendered.

No carrier, therefore (trunk or terminal), renders its part of the service **for the account** of any of the other participating carriers, but all of them, acting severally, unite in rendering the through unit of service for the account of the shipper, the public.

"Gathering freight originating" on a terminal line, "to the rails of the trunk line," **is not a service** "performed **for the trunk line**" when such act of gathering

constitutes a part of the transportation of that freight moving in interstate commerce.

It is desirable and convenient to the trunk line to have some other carrier perform that difficult and expensive part (the beginning or end) of the through movement, but the service is performed **for the shipper,** not **for the trunk line.**

It is so when the service is rendered under joint rates and divisions **voluntarily established;** it is **equally so** when the service is rendered under tariffs providing joint rates and divisions **prescribed by the Commission.**

And the fact that in business or accounting practice, one carrier line collects the entire through freight from the shipper, and pays to the other lines their respective portions thereof, does not even tend to prove that the services of one of them, the terminal carrier, was rendered for the account of the trunk lines, any more than it tends to prove that one of two trunk lines who participated in the line haul and in the divisions thereof, rendered its service for the account of the other.

Whether the through and joint rates, and the divisions of them or allowances out of them for transportation services rendered by the carriers, are established by voluntary act of the participating lines, or are prescribed by order of the Commission, the result is necessarily the same. The carriers (terminal and line) who render service at those rates, do so consenting in law to serve the shipping public in connection with the other carriers whose lines constitute a part of the through routes, over those routes, at the rates and for the respective portions of such rates, which have been thus provided.

And there is no distinction in law in respect of either the character of the service thus rendered, or the iden-

tity of the persons for whom rendered, or the right to payment out of the St. Louis rates, or the rights of the participating carriers or their shippers—between the two classes of cases, "voluntary" and "prescribed."

We therefore respectfully submit that the distinction made in the second opinion is not sound, and that the important conclusions deduced from it are erroneous.

Moreover, they are not in harmony with the express provisions of the Act, which without making any such distinction, empowers the Commission to establish through routes and joint rates, and to fix the divisions thereof.

In other words, we contend: That the Act makes it the duty of the Commission in a case (like this), where through routes exist but the carriers refuse or neglect to voluntarily establish joint rates and divisions—to prescribe such rates and divisions, i. e.—to **compel** the carriers to **consent** to prescribed joint rates and divisions, just as a court of equity is empowered to and will compel a party to execute a deed drawn by the Court and which it is his legal duty to give; and that joint rates and divisions thus established and prescribed, are no different in their character attributes or results, in respect of divisions and absorptions, than joint rates and divisions in like amounts voluntarily established over the same routes.

On page 102 of the second opinion, after speaking of the fact that local service in handling local shipments is performed "**for the shippers**" and that it is to them that the carrier must look for its rate, the Commission asks—"if, therefore, this service is recognized as being performed **for them on local shipments,** by what process of reasoning can it be transformed into one per-

formed **for the trunk line** when rendered as a part of a **through haul** for the same shipper?"

We submit that it is not so transformed, and is not sought to be so transformed. The error underlying the argument of the opinion is (as we have shown above) in the fundamental assumption that the services of the railway **"when rendered as a part of a through haul"** are rendered **for the trunk line.** In fact and in law they are rendered **for the shipper or consignee,** and **so are the local services.** The only difference is that because the service "rendered as a part of a through haul" is a part of a through route service, such service becomes and is a part of **the act of transporting** freight moving in interstate commerce, an act in the performance of which several carriers may participate, and in the compensation for which out of the through route each may share.

The owners of such shipments and the carriers moving them, are given by the Act the right to through and joint rates and fair divisions thereof, and fair practices in respect thereto. No such right is attempted to be given by the Act in respect of local (i. e., intra-state) shipments.

Therefore, a given physical movement of freight over the railway **for a shipper,** under **local** billing, **is not transformed** into a movement **for the trunk line** when the same physical movement is made under **through** billing. It is still a service **for the shipper or consignee,** even though other carriers perform a part of the through movement.

Nor does the Act permit any distinction to be drawn between small carriers and large carriers. Their rights under the law are equal.

What legal justification can be found for treating a small common carrier, even though "newly made" out

of what was formerly a plant facility, any different from a large carrier? Why assume that the portion of a through route movement performed by such a small carrier is rendered **for the shipper** and cannot be paid for out of the St. Louis rate, while holding that a like movement performed by a large carrier is rendered **for the trunk line** and may be paid for out of that rate?

Why assume or hold in the case at bar, that while the Iron Mountain may lawfully receive compensation out of the St. Louis rate for its terminal service in starting a car upon its through route by transporting it from the north side of the Fairbanks plant and delivering it to the Wiggins Ferry for a trunk line connection—the Manufacturers Railway cannot lawfully receive such compensation for its like service from the south side of the same plant?

No such discrimination between common carriers is made or permitted by the Act or under the common law.

It follows that the conclusions of the Commission in the first opinion were correct, and that the complainants were and are entitled to have shipments made at the St. Louis rate without any addition thereto, and to have the services of the railway paid for out of the St. Louis rate, and to the establishment and maintenance of tariffs so providing.

The Commission could and should have required the defendant lines to protect the St. Louis rate to the railway and its shippers, on the additional ground (sufficient in itself) that so long as their general practice continues of absorbing into the St. Louis rate the charges of the Terminal and of its subsidiaries, and the charges of the trunk lines having St. Louis terminals of their own, for spur track and industrial deliveries in the St. Louis district, it would create an undue and

unjust discrimination against shippers on the line of the Railway, and against the Railway itself, to discontinue such practice as to them.

Our contention upon this point as decided in the second opinion will be presented later, in a separate assignment of error, relating to the subject of discrimination.

With trunk line allowances to an **industry** for services rendered or facilities "furnished by the shipper," we have no concern in the case at bar. If any language in the petition, inaptly used in relation to the facts pleaded, seemed to indicate any such theory, certainly neither the facts pleaded and proved nor the contention made in the briefs and upon the argument gave any color or weight to it.

4. The question of discrimination, as to shippers, and as to the Railway.

On page 105 of the second opinion are the following findings and conclusions:

"That in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expenses of similar delivery by the railway upon the rails of that carrier **are not subjecting the shippers** located on and served by the railway to **undue prejudice and disadvantage.**"

A. The Commission's power to order absorptions.

We have in a former part of this application, and in discussing a different assignment of error, shown wherein, as we respectfully contend, the first of the above conclusions is erroneous, the Commission having the lawful power and duty under the Act to prescribe

not only joint rates but divisions thereof, or absorptions of the railway's charge into them, so long as spur tracks are treated in general practice, as points of origin and destination; and without regard to the existence of "undue discrimination."

B. **Discrimination as to shippers.**

While the shippers are now represented by separate counsel, and this application is filed on behalf of the Railway, we deem it proper in view of our previous representation of their interests and our consequent familiarity with the record, to make certain statements in support of the shippers' contention that the Commission has erred in the second of the above conclusions.

The conclusion of the Commission upon the same point, as expressed in the first opinion, page 314, was:

"On the whole record we are of the opinion and find that **the action of defendants in canceling the said divisions and absorptions**, which have been for many years included in the St. Louis rates, **has subjected complainant shippers** and a considerable portion of the public of South St. Louis **to the payment** of unjust **and unreasonable transportation charges and to undue discrimination and disadvantage**. This has been accomplished by canceling **what were in effect joint rates or charges.**"

As between these two widely different conclusions, we respectfully contend that the one expressed in the first opinion was sound in law and fact, and that the later one, is erroneous.

The record facts before the Commission at the time of the second decision, relevant to this point, were substantially the same as at the time of the first decision.

"The practice of trunk lines of absorbing the switch-

ing charges" of the Terminal, and of the St. Louis Transfer Railway, and of each other, for terminal services in through movements was the same. The nature, component parts, and relation to St. Louis and to the trunk lines, of the Terminal Railroad Association and its subsidiaries, were in the original record. The comparative track and traffic situation and relation of the Iron Mountain, Transfer Railway, and Manufacturers Railway, to the shipping public of South St. Louis, and to each other, were all fully disclosed in that record by the map prepared and furnished by the Louisville & Nashville Railroad, introduced by it into the original record, and there supplemented by extensive cross-examination of witnesses concerning it.

Even the fact that the railway had no line haul and consequently no reciprocal switching to offer to the trunk lines as to traffic originating upon a line elsewhere than in St. Louis, appeared in the original record.

Therefore, we think that we are accurate in stating that the only factor present in the supplemental hearing which was not present in the original, was the argument that the **existence or non-existence of reciprocal switching relations** constituted a valid ground for discriminating between terminal services and charges of the Manufacturers Railway and those of other common carriers performing terminal services in St. Louis.

As we understand the second decision upon the question of discrimination, it is predicated entirely upon that new distinction.

We have shown in an earlier portion of this application, our reasons or grounds for contending that the Commission erred in its attitude upon the matter of reciprocal switching. We shall not repeat them here.

We have also stated elsewhere herein our grounds for contending that neither the Railway nor its shippers

can lawfully be discriminated against on the ground that the lines of the Terminal and its subsidiaries can or should be treated as a part of the trunk lines, rather than as separate carriers, or on the ground that the terminal facilities of one trunk line, can or should be treated as a part of the other trunk lines or of the Terminal. We shall not repeat those reasons here.

As to shippers: There remains only the question of fact, whether the refusal of the carriers to longer apply to the railroads and its shippers, the practice of absorbing into the St. Louis rate, the charges of the railway, does or does not cause its shippers undue and unfair disadvantage, as compared with their competitors located on the lines of the terminal or trunk lines in St. Louis.

Upon that question we respectfully submit there can be only one conclusion, viz.: That the refusal as evidenced by the cancellations, did cause them and their consignees an added burden of expense in addition to the St. Louis rate, and so created undue preference and discrimination against them.

C. **Discrimination as to the Railway.**

The Act (as shown previously herein) prohibits the defendants from discriminating against the railway in respect of interchange business.

The record shows that the ordinance rate of $2.00 per car is less than the operating cost. It is not a reasonable or remunerative compensation for the services performed by the railway.

To deny to the railway the right to divide with the trunk lines the revenue resulting from through and joint rate (the St. Louis rate) paid by shippers for the through service, merely because the railway has no line haul or reciprocal switching relations, is an unjust discrimination against the railway and in favor of its com-

petitors, in that it deprives the railway of its only opportunity to receive reasonably compensatory rates on the greater part of its business, and it blocks the further growth of its business and lines in preventing new industries from settling near it.

Such discrimination is unlawful, and the second decision erred in not so holding.

5. **The Right to Reparation:**

On pages 107 and 108 of the second opinion, the Commission concludes and holds, that reparation cannot be awarded in this case to the railway as a common carrier, i. e., that the Commission has no power to award reparation to a carrier.

We respectfully submit that such conclusion is erroneous.

A. The first opinion correctly stated (page 316) that "The record contains statements from defendants to the effect that should the Commission **sustain the legality** of the divisions or absorptions, **reparation should be awarded** on the basis of the reasonable allowances determined by the Commission." And the opinion added: "When after further hearing and examination the **proper amounts** have been ascertained, reparation **will be awarded** on the basis of our final action respecting divisions or allowances."

The original record showed, Abstract, page 119, that a number of the lines were willing to have such rates as might be approved by the Commission "**made retroactive as of March 1, 1910.**"

So that the attitude of those defendants at least, upon this record, is that of **consenting to the jurisdiction** and of willingness to have such reparation awarded as of March 1, 1910, if the Commission should hold that it is proper and lawful for the charges of the Railway to be absorbed.

B. Concerning the present attitude of the shippers upon the question of reparation, we do not speak since they are separately represented.

As to this Railway, the original record and complainant's briefs fully and frankly showed that the Railway was claiming reparation and was treating its claims against the various trunk lines for divisions, absorptions and allowances during the reparation period, as assets of the Railway, to be collected as a part of its revenue.

The Railway still contends for that right, and we respectfully submit that there is nothing in the Act which prohibits or prevents a carrier from claiming and being awarded reparation if injured by some other carrier's violation of its rights under the Act.

On the contrary the Act expressly gives such a remedy to a carrier. Thus Section 13 provides that "any common carrier" may complain "of anything done or omitted to be done by any common carrier to * * * the Act, in contravention of the provisions thereof."

By Section 8 a right of action for damages is granted to every "person" injured by any breach by a carrier of its duty under the Act. This would include another carrier.

Section 9 provides an alternative remedy either by complaint to the Commission or by suit.

And Section 16 provides that, after hearing and decision of any complaint under Section 13, if "**any party complainant** is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the same," etc.

So that the Act not only creates the right but provides the remedy. And the fact that complainants

are usually shippers, is no reason why a carrier should not both claim and receive reparation.

The jurisdiction to award it certainly exists if the facts justify the claim.

In the case at bar, for instance, the carrier claims that it sustained money damages in the loss of revenue caused by the unlawful discrimination against it practiced by the defendants contrary to the Act.

And we respectfully contend that the Commission erred in holding that it has no power to hear any such complaint or to award damages under it.

6. **Certain Inaccuracies in the Facts Stated in the Second Opinion.**

We shall only mention two, thus:

(a) On page 99 of the opinion occurs the statement that the Railway does no **less than car load** business.

While the testimony so showed, it also showed that preparations for the doing of such business were under way, and the Commission must have overlooked the fact, of which it was advised prior to June 21, 1913, that beginning on February 16, 1913, the Railway has rendered a constantly increasing amount of less than car load service, amounting in some months to several hundred car loads per month.

(b) On pages 95 and 96, after describing the "middle zone" area, the opinion says: "The tracks within this area are leased by the brewery to the Railway."

That is partly correct, but substantially incorrect. All that the brewery lease covers is the trackage owned **by the brewery** within that area. This does not include any of the tracks on streets or alleys. It does include many yard and spur tracks, but none of them would be of any use or could be reached **except over the tracks owned by the Railway.** This situation was fully explained in our reply brief at the original hearing,

page 32 *et seq.*, and will not be repeated here. The apparent misconception of the actual conditions is substantial.

IV. Consequences Resulting from Compliance with the Decision.

We respectfully submit that the following consequences would result from a compliance with the second decision, and that they justify a reconsideration of the case, viz.:

1. The record shows, and it is a fact, that the Railway will **starve to death** if it receives no more than $2.00 per car on interchange business, the maximum rate which the decision indicates.

The Commission has overlooked the fact shown by the record, and explained in our briefs, that the ordinance rate, **less than compensatory** in amount, must be regarded as applicable only to local movements or to shipments arriving on a spent rate, and that the Railway could accept such a low ordinance rate because it would apply to only a small portion of its business, and because its obligation to perform even that small portion at such low rate must be regarded as continuing **compensation to the public** for the Railway's franchise use of the public's property. If the Railway's share of the revenue derived from through movements does not exceed $2.00 per car, it cannot live.

An order of the Commission pursuant to the decision, and refusing to permit the Railway to receive reasonable absorptions, allowances or divisions of the St. Louis rate, will cause a confiscation of its property, and will violate the fourteenth amendment to the Federal Constitution.

2. An order of the Commission pursuant to the second opinion, will cause and already has caused, the

trunk lines to again discriminate against the Railway and against shippers on its line, by cancelling all tariffs providing for divisions and allowances.

The effect of the decision has thus been to create unjust discriminations and undue preferences, contrary to the Act to Regulate Commerce.

It has also been to deny to the Railway and to its shippers the equal protection of the laws, in further violation of the Fourteenth Amendment.

3. Although the Commission declined (p. 110) "to discuss the question whether the Terminal Railroad Association is a monopoly," it did note the fact (p. 104) that the Manufacturers Railway is "endeavoring to construct an extensive terminal system to rival" the Terminal Railroad Association.

We understand that one of the fundamental purposes of the Act, in the interest of the public, is to foster competition and preserve equality between common carriers.

And we respectfully call the attention of the Commission to the fact that such purpose will be completely frustrated by an order if made pursuant to the decision, because its inevitable result would be to cripple the Railway, retard its growth, discourage industries from settling upon it, and competitive business from using it, put a prohibitive burden upon its use for through shipments, and, in short, to invite it to sell out for the benefit of its rival.

V. We are informed that in the case of other carriers whose status and charges have been or are being investigated by the Commission, and even in the case of carriers having little claims to the status of common carriers under the Act, the Commission has, properly, we think, given them the benefit of doubts and has permitted them to live during the period of investigation,

by receiving reasonable allowances from the trunk lines out of the joint rates, for terminal transportation services.

We respectfully ask that like consideration be shown the railway in the case at bar, and to that end, that the new tariffs recently filed be suspended pending the final determination of this case, and if any of them have become effective, that the Commission make known to the trunk lines that it will permit those of them who are willing to do so, to resume paying divisions and allowances to the Railway pending final decision and order in this case.

Respectfully submitted,

NAGEL & KIRBY,
Of Counsel,
Attorneys for Complainant, Manufacturers Railway Company.

Application of Anheuser-Busch Brewing Association, Stecher Cooperage Works, Independent Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel-Ganahl Lumber Company, St. Louis Cooperage Company and Western Foundry and Sash Weight Company for Rehearing.

The application for rehearing in this case, made by the Manufacturers Railway Company, presents the case comprehensively for that company, and most, if not all, of what is urged therein applies in behalf of the companies who are shippers over the lines of the Railway Company and are also desirous of a rehearing and hereby petition therefor.

They beg to submit, in addition to what has been

said on behalf of the Manufacturers Railway, some suggestions from the standpoint of their distinctive interest as shippers.

Prior to March 1, 1910, the railroad companies at St. Louis brought in freight from the various points of origin and delivered it to the consignees at their various points of receiving freight upon the terminal lines in the city, and conversely received out freight at the various points of delivery on the terminal lines in the city and carried it to destination, and this was done for the through St. Louis rate, whether the delivering or receiving point was on the rails of the trunk line carrier or was on the terminal tracks of another trunk line carrier or on the lines of a carrier doing a distinctive terminal business.

The particular form of the arrangement under which this was done, whether the trunk line carrier absorbed the terminal charge or whether there was a division of the through rate between the trunk line carrier and the terminal carrier, did not concern the shipper. The fact remained that his entire transportation service was rendered for him at the through rate.

The facts above stated were true as to all shippers in St. Louis. The through St. Louis rate in one way or another included compensation for the service of the terminal carrier.

December 31, 1909, the trunk line carriers gave notice that after March 1, 1910, no allowance would be made in any form out of the through rate to the Manufacturers Railway for any service rendered by it on either in or out shipments, and as a consequence the shippers using the Manufacturers Railway must for the entire transportation service rendered to them, pay the through St. Louis rate and, in addition thereto, the

charge for terminal service rendered by the Manufacturers Railway. We are stating matters according to their practical effect.

Like notice, it is said, was given with respect to shipments to and from some other terminal lines, but the inquiry in this case has not extended to them and so we have not to consider them in this petition.

No such notice was given and no such change was proposed as to shipments to or from points on the lines of the Terminal Railroad Association of St. Louis or points on the terminals of the trunk line carriers in St. Louis.

This proceeding was instituted to prevent the proposed change and to secure a continuance of the existing equality of treatment between the shippers using the lines of the Manufacturers Railway and those using the facilities of the Terminal Railroad Association, or of the trunk line carriers.

The existing system of equal treatment was not compelled by any order of this Commission, but had been voluntarily established by the railroad companies, and the proposed change was not responsive to any such order, but was on the initiative of the carriers.

On the first hearing the objection to the existing system was substantially that the Manufacturers Railway Company was not a common carrier, but a mere plant facility of one of the shippers, the Anheuser-Busch Brewing Association.

As to this the Commission said in its first report, June 21, 1911, p. 313, that:

> "In view of all the facts, circumstances and conditions bearing upon this question, we have no doubt that the Manufacturers Railway Company is in fact a common carrier at common law, notwithstanding any modification thereof, and there-

> fore within the provisions of the first section of the act to regulate commerce, and that the payment to it of a reasonable and just portion of the St. Louis rates for the terminal services rendered by it is not unlawful."

This was a complete justification of the existing mode of doing business.

As to the change proposed by the trunk line carriers, the Commission said, pp. 314 and 315:

> "On the whole record we are of the opinion and find that the action of defendants in canceling the said divisions and absorptions, which have been for many years included in the St. Louis rates, has subjected complainant shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges and to undue discrimination and disadvantage. This has been accomplished by canceling what were in effect joint rates or charges and leaving in effect what are found to be unjust, unreasonable, and discriminatory charges."

This, so far as concerned the shippers, decided the case in its entirety. There remained only a question in which they were not concerned, viz: the compensation to be paid by the trunk line carrier to the Manufacturers Railway Company, or what comes to the same thing, the division of the joint rate between the two.

Ordinarily this question might be left to the agreement of the parties concerned, if they could agree, but in the present case individuals interested very largely in the Manufacturers Railway Company were also interested very largely in the Anheuser-Busch Brewing Association. In fact, the dominant individual interests in each were the same. And the shipments of the

Brewing Association constituted the larger portion of the shipments over the Manufacturers Railway. So the matter in question could not be left entirely to the agreement of the parties, as the allowance for terminal service or the division of the through rate might be made the cover for discriminating rates to the Brewing Association.

The greater number of shippers, and they contributed a substantial volume to the business of the Manufacturers Railway, were not interested either in the Railway or in the Brewing Association, and a number of the shippers are competitors of the Brewing Association.

On the further hearing had for the purpose stated above, the report and finding of the Commission upon the first hearing was assailed by one of the trunk line carriers.

No change in the physical facts or in the material conditions affecting the service of transportation rendered to the shippers was disclosed, unless it be that the continual increase of its terminal facilities by the Manufacturers Railway Company, and the continual increase of the volume and proportion of the business using those facilities, furnished by shippers not interested in any proprietary way in either the Brewing Association or the Manufacturers Railway, constitute such a change.

In the first report the Commission says as to this phase of the case that "we have carefully considered these features of the controversy and note that the manager of the Terminal Railroad Association (of St. Louis) testified that the matter of the cancellation of these tariffs received the attention of his Association immediately following the publication in the St. Louis press of plans for the further development of the prop-

erty of the Manufacturers Railway Company giving it outlets to the outside world independent of the Terminal Railroad Association, its proprietary or subsidiary lines" (p. 314).

The shippers insist that so far as they are concerned, the Manufacturers Railway should not be held to be any less a bona fide terminal carrier, because in fact it makes itself more and more so. And the Commission was clearly of this opinion on the first hearing.

After the further hearing and in its second report, the Commission found as to the character of the Manufacturers Railway that it "is a common carrier subject to the Act (Interstate Commerce) as held in our previous report," but the Commission further finds, pp. 105 and 106 of the report of June 21, 1913, that:

> "The payments formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered to the trunk lines and were in no sense divisions of joint rates as for services rendered for the shippers served by their railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expenses of similar delivery by the railway upon the rails of that carrier are not subjecting the shippers located on and served by the railway to undue prejudice and disadvantage; that therefore the only lawful order the Commission can make is in the establishment of joint rates if the conditions are such as to warrant that action; that under joint rates so prescribed that part of the service performed by the railway would be

in the contemplation of the act a service performed for the shipper to be paid for by the shipper and could not be construed by the Commission to be a service rendered for the trunk lines, the expense of which could be required by the Commission's order to be borne by the trunk lines; that the rates of the trunk lines not being shown to be unreasonable in themselves, such joint rates with the railway must therefore necessarily be in excess of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis."

This ruling the shippers respectfully submit discriminates against them and in favor of shippers located on the lines of the Terminal Railroad Association and on the terminals of trunk line carriers.

The justification for the ruling so far as found in the quotation from the report which we have made is, we submit, purely formal and verbal. It is not based upon material conditions or physical facts.

1. It is said that the payments formerly made to the Manufacturers Railway were "absorptions," while payments to be made under the order of the Commission sought by the shippers would be part of a "joint rate."

2. That the services rendered under the "absorption" were services rendered to the trunk line carrier, while the services rendered under the "joint rate" would be services rendered the shipper.

3. That the "absorption" was the voluntary act of the trunk line carrier, while the "joint rate" would be under compulsion of the Commission.

These are all distinctions, so far as the shippers are concerned, and not differences. They do not arise out

of material conditions or physical facts and so are purely metaphysical.

What they are made to justify is however more than a distinction and is a very substantial difference.

They make the shipper on the Manufacturers Railway pay more for the same transportation service than he did before, and more than competitors in St. Louis pay for a like service. They deny to him the benefit of the through St. Louis rate.

Absorption and Joint Rate.

Whether the shipper gets the through rate by virtue of "absorption" or of a "joint rate" is all one to him. He pays in either case the same sum for the same service. It may involve a difference in accounting or bookkeeping to the carriers, but nothing more, and no such difference can justify a difference in the treatment of shippers.

Service to Shipper and Service to Carrier.

So, too, the question as to whether the terminal service is rendered to the trunk line carrier or to the shipper is purely formal. There is no pretense that it is physically different. It is a haul to or from the same point on the terminal line over the same rails, by the same engine and by the same crew.

The shipper is interested in the entire transportation and that is, and was before, as much as now, a service rendered to him.

The trunk line carrier is interested in having freight brought to its lines, and the bringing of freight to its rails is now as much as it was before a service rendered to it.

The terminal carrier is interested in rendering the

terminal service and the bringing in freight to it by the trunk line carriers is a service to it and was under the old arrangement, and in like manner the terminal carrier is served when the shipper delivers to it his out freights.

The question of who is served depends entirely upon the standpoint from which the inquiry is made. Ask it from the shipper's standpoint and the answer is that both carriers serve him. From the standpoint of the trunk line, both shipper and terminal carrier serve the trunk line, and again, getting into the place of the terminal carrier, it is served by both the trunk line and the shipper.

The transaction under inquiry is in every case the same. If it is outbound, the shipper takes it to the terminal, the terminal to the trunk line and the trunk line to destination. If it is inbound freight, the transaction begins with the trunk line and ends with the consignee. In the one case the shipper sends, and in the other he receives, and in each case the agencies of sending and receiving are the same.

We can resolve the transaction into its elements very much as we please, and at pleasure change the relations of the elements to each other, but they remain in fact "as unto the bow the cord is, * * * useless each without the other."

Discrimination in Fact Against the Shipper.

The only difference, in fact, to be discovered in the "before" and "after" representations of the transactions, is the increased charge to the shipper. That is not formal or metaphysical, but a circumstance of fact and of painful significance.

The distinctions as to the service "before" and

"after" grow out of this discrimination as to the charge for service. Remove the discrimination and the distinctions disappear.

In immediate effect indeed, only the shipper is concerned in this controversy. That the trunk line carrier gets the full through rate to St. Louis, does not as to any one transaction concern the Manufacturers Railway so long as it receives proper compensation for its terminal service. The Manufacturers Railway is interested through the effect of the discrimination upon the shippers. They cannot expand their business and other industries will not be developed upon the lines of the railway if this discrimination is continued.

So this is a shippers' fight, and the principles upon which it is determined will be applicable in cases where both carriers, the trunk line and the terminal will be upon the same side.

The utmost ingenuity of casuistry will always be exerted by carriers who maintain discriminations in charge, to discover distinctions in service to justify them.

A glaring example may be found in the sugar shipments from New York to the West, a subject with which this Commission has dealt and which is now under submission to the Supreme Court of the United States.

The Arbuckle Bros., refining sugar on Long Island, lighter their sugar to the Jersey shores and there deliver it to the railroad companies, who take it to the West. Out of the New York rate the railroad companies make to Arbuckle Bros. a very substantial allowance for the lighterage service.

The Federal Sugar Company, refining sugar at Yonkers, lighters its sugar to the same Jersey shores, to the same places on those shores, and delivers it to the

same railroad companies who take it to the same points in the West for the same New York rate, but without any allowance to the Federal company for the lighterage service.

The physical facts as to the service rendered by the railroad companies in the transportation of the sugar are the same as to the two shippers. There is no difference that is tangible to any sense. You can neither see nor feel nor touch nor taste nor smell any difference in what the railroad company does in the way of transportation.

The difference is solely in the charge. The Federal Company pays more for the same service.

Having made the discrimination, the carriers were fertile in making distinctions. They could "distinguish and divide a hair 'twixt south and southwest side." A free lighterage limit made by themselves and which they could change at will, an imaginary line that presented no physical barriers of any kind, distinguished between the service rendered to the Arbuckle Bros. and the Federal Company. But always the service was in fact the same, hauling sugar from the same place on the Jersey shore to the same place in the West.

But the Interstate Commerce Act deals with material conditions, with substance and not with form. Its purpose is to protect shippers against discriminations in fact, and where these exist, the authority of the Commission is properly invoked and should be exerted.

Compulsory and Voluntary Action.

That the "absorption" was the voluntary act of the trunk line companies, while the "joint rate" is the compulsion of the Commission, does not, we submit, affect the matter.

It may be conceded that there are things related to transportation which a common carrier may do if it will, but which it cannot be compelled to do.

It is insisted, however, that whatever a common carrier may do, if it will, it must do, if that be necessary to prevent actual discrimination by it. It cannot as it pleases, exercise or not such voluntary powers and so favor one shipper as against another.

The positive provisions of the Interstate Commerce Act preclude the existence of any power on the part of the carrier to discriminate and so preclude the use of admitted powers in such way as to accomplish discrimination.

Reciprocal Relations Between the Trunk Lines.

There are considerations of a material nature adverted to by the Commission in its last report which are suggested rather than asserted as possibly excusing the discrimination of which we complain.

These are the reciprocal relations existing between the trunk line carriers through the terminals owned by each and their proprietorship of the Terminal Railroad Association of St. Louis.

But as to this, it must be considered that the relations of the various trunk lines are very far from being the same or anything near the same.

Some of the trunk lines have very extensive terminals of their own and others have practically none at all and are dependent altogether on the Terminal Railroad Association of St. Louis. And some of the trunk lines are owners of the Terminal Railroad Association and others are not.

The reciprocal relations suggested do not exist so far as their own terminals are concerned between com-

panies having extensive terminals and companies having none.

And even as between companies, each having terminals in the city, there is nothing to show that one renders terminal service for another on any basis of reciprocity, that is that each gives to the other the benefit of its terminal service.

The service in any case is charged for by the company rendering it and it is paid according to the amount of such service rendered by it. Company A does not handle a thousand cars for Company B, simply because Company B handles a hundred cars for it.

Reciprocity here is a mere word. Each company which has terminal facilities and uses them as a terminal carrier of shipments coming in over other lines is paid for that service and is paid for it out of the through rate, and the more of such terminal service it renders, the more it is paid. Where then is the reciprocity? And why should any other terminal carrier rendering the same service, even though it does not own a trunk line, be denied compensation for that service and why as to the shipper, should not that compensation be absorbed?

As to any single transaction it is impossible to discover a reason for absorption in the one case and not in the other. The trunk line brings it in and so far as it is concerned, either one of two companies can render the terminal service required. Turning it over to one it absorbs the terminal charge and turning it over to the other it refuses to do so. Surely this is discrimination!

Does the proprietary interest of the trunk lines in the Terminal Railroad Association create a condition justifying what would otherwise be a discrimination?

For one thing, all the trunk line carriers involved

are not proprietors and so the protecting blanket is not broad enough to cover the case.

Terminal Railroad Association Must Be an Independent Institution.

Passing this, however, we submit that for every purpose of this proceeding, and even if every one of the trunk line carriers were an equal proprietor of the Terminal Railroad Association, that Association must be considered as an independent institution as much as the Manufacturers Railway Company.

In support of our view we cite the case of the United States vs. Terminal Railroad Association, 224 U. S. 383. This case seems not to have been considered as bearing upon the present proceeding.

We do not propose to urge matters of form in this connection.

The Terminal Railroad Association is to be dealt with as independent of the trunk lines, not only because it is not owned in equal share by all of them, but because it is a different institution from them, performing an essentially different function.

The statutes of Missouri make elaborate provision for Terminal Companies which may be organized either by individuals or by railroad companies, and this "in order to facilitate the public convenience and safety in the transmission of goods and passengers in and in the neighborhood of large cities from one railroad to another and to prevent the unnecessary expense and inconvenience and loss attending the accumulation of a number of stations." (Section 3215, R. S. of Mo., 1909.) Whether the terminal company be organized by individuals or by railroad companies

makes and can make no difference, as to the right either of carriers or of shippers to the use of the facilities possessed by the terminal company.

That a terminal railway is a distinctive thing was recognized by the Supreme Court of Missouri in the case of State vs. Terminal Railroad Association, 182 Mo. 284. The Attorney General in that case attacked the scheme of the Terminal Railroad Association as in violation of Section 17, Article 12, of the Constitution of Missouri, which prohibits the combination or consolidation of parallel or competing lines of railroad. The Supreme Court of Missouri did not find in that case that the terminal lines originally independent of each other, which were brought into the present terminal system, were not parallel and competing, but accepting them as such held that these lines were not railroads within the meaning of the constitutional provision. This distinction was based upon the essential difference in the function performed by a trunk line in bringing a shipment into the city and that of the terminal company in making delivery to the shipper on its lines. And this reasoning of the Supreme Court of Missouri was approved by the Supreme Court of the United States in the case referred to, and because of the nature of the function performed by the Terminal Railroad Association, it was held by the Supreme Court of the United States that the combination of the terminal lines, theretofore independent, under the ownership of the Terminal Railroad Association would not, so far as the mere matter of combination was concerned, be a monopoly in violation of the Sherman Act.

It was determined, however, that there were monopolistic and illegal features in the existing terminal scheme and these must be eliminated or the combina-

tion must be dissolved. And the objectionable features of the scheme grew out of the attempt to deal with the Terminal Railroad Association as a means of reciprocal relations between the proprietary companies.

The Commission in its second report (p. 105) says it is argued by complainant that the Terminal Association is a separate corporation from the trunk lines, and it comments that "this is true." The Commission proceeds to show the interests which the trunk lines have in common through the terminal system and finds some excuse in these common interests for their course of dealing with the Manufacturers Railway, "which by its own statement, is endeavoring to construct an extensive terminal system to rival the trunk lines' own facilities as represented in the Terminal Association" (p. 104).

If the Terminal Railroad Association is an independent institution, why should the trunk lines discriminate in its favor?

The Supreme Court of the United States, in the case cited, speaking of the terminal system as it found it in the record, said that it **was not** an independent institution, and said further, "the fact that the Terminal Company is not an independent corporation at all is of the utmost significance" (p. 398).

The Court found that the Terminal Association was not an independent institution in fact, but if it would continue to exist **it must become one.** The fact that it was not independent, that it was the creature of the proprietary companies and subject to their will, and the fact that through their proprietary interest, the proprietary companies were at an advantage in the St. Louis situation, made the existing arrangement an offense against the Sherman law.

Proprietary Lines Can Have No Special Privileges in Terminal Railroad Association.

The Terminal Association was owned by fourteen railroad companies, but twenty-four companies did a carrier's business with St. Louis, and other roads might be built in from time to time. If the proprietary companies had any peculiar rights in respect of terminal service as against any other companies, then the Terminal Association was not an independent institution and was a combination in violation of the Sherman Act. And the Court found that such rights were secured by a provision in the scheme that other companies could be admitted to the terminal arrangement only by unanimous consent of the existing members, and the decretal order required "such a modification of the agreement between the Terminal Company and the proprietary companies as shall constitute the former the bona fide agent and servant of every railroad line which shall use its facilities" (224 U. S. 410).

Peculiar rights or special privileges as incident to the reciprocal relations of proprietorship in the Terminal Association are absolutely precluded by this decision.

The Terminal Association is within the law not as a reciprocal terminal arrangement between the proprietary companies, serving their distinctive interest and giving to them an advantage over their competitors, but only as it has been reformed in its constitution, made an independent institution in fact and as such the equal and impartial agent and servant of all who have occasion for the use of its services. No discrimination even in favor of owners.

Proprietary Lines May Not Discriminate as to Terminals.

Now if an arrangement which enabled the proprietary companies to use the facilities of the Terminal Association to their peculiar advantage as trunk line carriers was a combination in violation of the Sherman law, would not an arrangement which enabled those same companies to use their trunk lines to their peculiar advantage as proprietors of the Terminal Association be equally a combination in violation of the Sherman law?

This must be so. The Terminal Association is not an independent institution if the proprietary trunk lines are bound to it any more than if it is bound to those lines. The effect of the decision is that the trunk lines may combine for the mere extension and amplification of facilities, but not for any advantage in the use of the facilities secured by the combination as against any existing or potential competitor. And this limitation upon the extent of lawful combination applies as well to terminal facilities as to trunk lines.

This is not a matter of inference or argument. That is expressly decided in the case cited. The Court found the Terminal arrangement to be in violation of the Sherman law also because "by another clause in the agreement the proprietary companies obligated themselves to forever use the facilities of the Terminal Company for all business destined to cross the river" (224 U. S., p. 400). "This," the Court said, "would amount to guaranteeing against any competitive system since the companies to the agreement now control about one-third of the railroad mileage of the United States." And so provision was made in the decretal order for "eliminating from the present agreement

between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company" (224 U. S. 411).

The two decretal provisions we have quoted secure and were intended to secure the complete independence in fact of the Terminal Association and a free field in St. Louis for new trunk lines and for new terminal lines.

But of what avail is it to abrogate and condemn the agreement of the proprietary companies for the exclusive use of the facilities of the Terminal Association, if those same companies shall be permitted to use other terminal facilities only under adversely discriminating conditions? The Court did not have the Manufacturers Railway in mind, for there was nothing concerning it in the record. It had in mind the general shipping public of St. Louis. The decision is a declaration of public law and public policy broad in its terms, for the benefit of the City of St. Louis and all its varied interests, transportation, commercial and industrial, and makes provision against any monopolization of transportation facilities, either trunk line or terminal.

This provision of the decree is operative as to all of the proprietary companies and as to each of them. One of them may not any more than all of them decline relations with any other terminal company than the Terminal Association of St. Louis, and as discrimination is practical denial it may not discriminate.

Here, then, is the decision of the Supreme Court of the United States holding first that no trunk line having access thereto can be excluded from the use upon equal terms of the facilities of the Terminal Associa-

tion, and conversely, that no terminal company can be excluded from use by any of the trunk lines.

You may, says the Supreme Court, in effect, to the proprietary companies and to the Terminal Association, combine the terminals of St. Louis in one system, but it is upon the express conditions (1) that the facilities of the system shall not be monopolized by the proprietors and that the proprietors shall have no advantages over others in their use, and (2) that you do not by your combination prevent or hinder the full and free development and increase of terminal facilities by others if so be it others choose to undertake it. The institution created by the combination of the trunk line companies must be absolutely independent in fact and otherwise the combination is illegal.

This proceeding is directed against the cancellation of tariffs which gave to the shippers located on the Manufacturers Railway the full benefit of the through St. Louis rate. The Commission found in its first report that the matter of the cancellation of these tariffs received the attention of the Terminal Association "immediately following the publication in the St. Louis press of plans for the further development of the property of the Manufacturers Railway giving it outlets to the outside world independent of the Terminal Railroad Association, its proprietary or subsidiary lines" (p. 314).

The cancellation of these tariffs will serve to thwart, hinder, make onerous and discourage what the Supreme Court said it was against public law and public policy to prevent or deny.

The case as it now stands is not primarily or principally the case of the Manufacturers Railway Company, but is the case of the entire shipping public of St. Louis. The conclusion of the Commission is not based

upon tap line or plant facility considerations, and as to shippers not interested as proprietors in either the Manufacturers Railway Company or the Brewing Association could not be. If the reciprocal relations of the trunk line carriers through terminal facilities owned and used by them in common justify discrimination against the Manufacturers' Railway Association, they justify equally like discrimination against any other terminal system that may be projected at any time hereafter by anyone whomsoever, and every such enterprise is predestined to be strangled at its birth in the coils of those relations.

When what is thus said to inhere as a right in these reciprocal relations was set down in explicit terms as an obligation of the contract constituting those relations, the Supreme Court of the United States denounced it as a public wrong and as vitiating the entire arrangement of which it was a part unless it was unqualifiedly abrogated.

LEHMANN & LEHMANN,

Attorneys for Complainant Shippers.

The three Reports of the Interstate Commerce Commission are printed in full as exhibits to the Answer of the Commission in this case, and therefore are not inserted in this Abstract.

This abstract does not include an abstract of the evidence introduced before the Commission in its Cause No. 3151, because copies will be filed in this cause, of the two printed Abstracts of such evidence which were filed with the Commission, and which will

serve to present that record in this case, in the same form in which it was presented to the Commission.

Respectfully submitted,

SIDNEY F. ANDREWS,

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SAMUEL H. WEST,
EDWARD A. HAID,

Of Counsel and Solicitors for Petitioner, St. Louis Southwestern Railway Company.

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153 Filed March 12, 1915. W. W. Nall, Clerk.

Before the Interstate Commerce Commission.

No. 3151.

MANUFACTURERS RAILWAY COMPANY, ANHEUSER-BUSCH BREWING Association, Stecher Cooperage Works, Independent Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel Ganahl Lumber Company, St. Louis Cooperage Company, and Western Foundry and Sash Weight Company, Corporations, Complainants,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE Missouri Pacific Railway Company, The Wabash Railroad Company, Missouri, Kansas & Texas Railway Company, St. Louis & San Francisco Railroad Company, St. Louis Southwestern Railway Company, Louisville & Nashville Railroad Company, The Baltimore & Ohio Southwestern Railroad Company, Chicago, Burlington & Quincy Railroad Company, The Chicago & Alton Railroad Company, Chicago & Eastern Illinois Railroad Company, Chicago, Rock Island & Pacific Railway Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Illinois Central Railroad Company, Mobile & Ohio Railroad Company, Southern Railway Company, Vandalia Railroad Company, Toledo, St. Louis & Western Railroad Company, Chicago, Peoria & St. Louis Railway Company of Illinois, Corporations, and John C. Ramsey and Henry M. Merriam, Receivers of said Chicago, Peoria & St. Louis Railway Company of Illinois, Defendants.

Abstract of Evidence.

Nagel & Kirby, Cassoday & Butler, Schnurmacher & Rassieur, Attorneys for Complainants.

154 Before the Interstate Commerce Commission.

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Abstract of Evidence.

NAGEL & KIRBY,
CASSODAY & BUUTLER,
SCHNURMACHER & RASSIEUR,
Attorneys for Complainants.

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155 Before the Interstate Commerce Commission.

No. 3151.

MANUFACTURERS RAILWAY COMPANY, ANHEUSER-BUSCH BREWING Association, Stecher Cooperage Works, Independent Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel Ganahl Lumber Company, St. Louis Cooperage Company, and Western Foundry and Sash Weight Company, Corporations, Complainants,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE Missouri Pacific Railway Company, The Wabash Railroad Company, Missouri, Kansas & Texas Railway Company, St. Louis & San Francisco Railroad Company, St. Louis Southwestern Railway Company, Louisville & Nashville Railroad Company, The Baltimore & Ohio Southwestern Railroad Company, Chicago, Burlington & Quincy Railroad Company, The Chicago & Alton Railroad Company, Chicago & Eastern Illinois Railroad Company, Chicago, Rock Island & Pacific Railway Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Illinois Central Railroad Company, Mobile & Ohio Railroad Company, Southern Railway Company, Vandalia Railroad Company, Toledo, St. Louis & Western Railroad Company, Chicago, Peoria & St. Louis Railway Company of Illinois, Corporations, and John C. Ramsey and Henry M. Merriam, Receivers of said Chicago, Peoria & St. Louis Railway Company of Illinois, Defendants.

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Evidence.

Complainants introduced in evidence, as Exhibit 1, a letter dated "St. Louis, July 13, 1909, signed by J. M. Johnson, Vice-
156 President, Missouri Pacific and St. Louis, Iron Mountain & Southern Railway Company," addressed to W. B. Biddle, V. P. Rock Island-Frisco System; D. Miller, V. P., C., B. & Q. Railway Company; C. Haile, V. P., M., K. & T.; and H. E. Farrell, F. T. M. of St. L. & S. W. R. R. Co. It reads as follows:

"DEAR SIRS: You are no doubt familiar with the opinion rendered by the Interstate Commerce Commission in case of General Electric Company, No. 1099, and Solvay Process Company, No. 973, in connection with which the Commission set forth very clearly its views with respect to the absorption by common carriers of the internal switching charges, assessed by industrial railroad companies.

We have several arrangements of this character at the present time at St. Louis and East St. Louis, and I believe your company is similarly situated. We are disposed to consider them of questionable legality, certainly so when measured by the standards set up by the Interstate Commerce Commission in these two cases.

We have been seeking, through the medium of the St. Louis Terminal Committee of the Western Trunk Line Committee to accomplish their discontinuance, but have not thus far met with the co-operation of all interested lines in that direction.

Won't you please give the subject consideration and let me know what you think we should do in the premises? We are, as indicated above, entirely of the belief that we should get away from those practices, but have, of course, felt that our interests required that our competitors should take similar action."

Attached to this letter were the replies received from the gentlemen to whom the same was addressed.

157 W. S. McCHESNEY, JR., testified:

I am president and general manager of the Terminal Railroad Association of St. Louis. I am also either president or vice-president of the subsidiary companies of that company, but not of any other organizations, members of the Terminal Railroad Association. I am chairman of the General Managers Association. There are fourteen proprietary lines of railroad constituting the Terminal Railroad Association, viz.: The B. & O., C. & A., L. & N., Wabash, Missouri Pacific, I. M. & S., Southern, Ill. Cent., Burlington, M. K. & T., C. C. C. & St. L., C., R. I. & P., Frisco and Vandalia.

The capital stock of the Terminal Railroad Association is fifty millions authorized, with only $2,882,000.00 issued and outstanding and held in equal proportions by the fourteen lines. The number of shares held by each is 2,058. The other officers of the Terminal Railroad Association are: Julius S. Walsh, Chairman of the Board; Mr. Burlingame, General Superintendent; Mr. Daab, Treasurer; Mr. Vinnedge, Secretary. The directors are: Mr. C. C. F. Bent of the B. & O.; Mr. Ackert, C. & A.; Mr. E. F. Ward, Burlingame; Mr. C. E. Schaff, C. C. C. & St. L.; Mr. Melcher, Rock Island; Mr. Park, Illinois Central; Mr. G. Evans, L. & N.; C. S. Clark, Missouri Pacific; C. H. Middleton, Iron Mountain; A. A. Allen, M., K. & T.; C. R. Gray, Frisco; T. C. Powell, Southern; B. McKeen, Vandalia; Henry Miller, Wabash.

158 Those just named are the proprietary lines represented on our board. We have other lines of railroad, known as tenant lines, which use our terminals, on the same basis as the proprietary lines, under an agreement with the Terminal Railroad Association. The officers of the Terminal are not connected with any of the different lines of railway.

The agreement of October 1, 1889, covering the formation and operation of the Terminal Railroad Association was produced later by the witness and was filed as part of the record but not marked as an exhibit, and is in part as follows:

"Whereas, the first party (Terminal) has, at the instance and request of the several proprietary companies, obtained by purchase, lease, assignment of lease and otherwise the properties heretofore belonging to the Union Railway & Transit Company of St. Louis and of East St. Louis; also to the Terminal Railroad of St. Louis and East St. Louis; also to the Union Depot Company of St. Louis; also to the St. Louis Bridge Company and the Tunnel Railroad of St. Louis, to the end that said properties may be held in perpetuity as a unit and developed and improved in the interest of the proprietary companies, for the purpose of furnishing adequate terminal facilities in St. Louis and East St. Louis; and

Whereas, the several proprietary companies do now wish to secure in proper form and in perpetuity a right to use said Terminal properties of the first party now held and hereafter to be acquired."

After said recitals, the contract provided in part:

1. The Terminal Railroad Association granted to each of the proprietary lines a right of joint use, with each other and with such other companies as may be admitted as proprietary lines to joint use hereof, of all said Terminal properties of the first party then held, or that might thereafter be acquired in St. Louis, Missouri,
159 and East St. Louis, Illinois, including the St. Louis Merchants' Bridge & Tunnel for passengers and freight, express and mail business and for interchange of same between each other and with the public, it being understood that the rights thereby granted to each proprietary company were not transferable to any extent whatever.

2. The Terminal Railroad Association agreed as soon as practicable to procure additional real estate and to construct thereon a new Union station, also freight stations, additional main and side tracks, switches, etc., suitable in size, location and construction; also to perform promptly and efficiently the work of receiving, delivering and transferring passenger and freight traffic of the proprietary companies at St. Louis and East St. Louis, and of other railroad companies which might thereafter be admitted to joint use of the terminal properties and the right of joint use of such additional structures and improvements whenever acquired were granted in perpetuity to the proprietary lines, the same as in respect to properties then owned by the Terminal Railroad Association.

3. Each proprietary line accepted the right of joint use granted to it by the contract, and "hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described for all passenger and freight traffic within its control through, to and from St. Louis and destined to cross the Mississippi river at St. Louis, and pay therefor as herein provided."

4. The directors of the Terminal were to be eight in number, to consist of one representative from each proprietary company, the number to be increased if new proprietary lines were admitted. There was to be an additional representative to be chosen by all of the proprietary companies, such representative to be president of the Board

of Directors. The board was to prescribe all rules and regula-
160 tions in respect to the use, control and operation of the entire terminal system. Through its Executive Committee, the board was to appoint all officers, agents, chiefs of departments, prescribe their duties, and organize the service in a manner most conducive to the best interests of the association and the public. They were, from their membership, to appoint an Executive Committee of three to serve for one year; said committee to have such power as the board might delegate to them in the by-laws.

5. No party to the contract was to sell or otherwise transfer or underlet the rights and privileges granted thereby without the unanimous consent of the Board of Directors of the Terminal.

6. The agreement was to be executed in counterpart, and any Railroad Company not named therein, as a second party, might be admitted to the joint use of the Terminal System on unanimous consent, but not otherwise, of the Directors of the Terminal and on payment of such a consideration as they might determine and on signing the contract or a counterpart thereof, thereby indicating its rights and duties in all respect- to the use of the Terminal System to be the same and none other as the proprietary companies named in the contract as second parties.

Mr. McChesney later produced also the agreement of December 16, 1902, between the Missouri Pacific Railway Company and others, with the Central Trust Company of New York and William Taussig, as trustees, entitled, "Trust Agreement," which was filed, but not marked as an exhibit, and which shows, by recitals and the covenants therein contained, the following facts among others:

1. The Terminal Railroad Association of St. Louis is a corporation organized under the laws of Missouri, by an agreement of consolidation, made July 26, 1889, between the Union Railway
161 & Transit Company of St. Louis and Terminal Railroad of St. Louis. It was organized for the purpose of acquiring title to and possession of various terminal railroad facilities in St. Louis and East St. Louis.

By the agreement dated October 1st, 1889, the Missouri Pacific Railway, the St. Louis, Iron Mountain & Southern Railway, the Wabash Railway Company, the Ohio & Mississippi Railway Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Louisville & Nashville Railroad Company became and were the proprietary members of the Terminal Association and "each of said proprietary companies, parties to said agreement, agree forever to make use of the bridge and terminal properties of the Terminal Association for all passenger and freight traffic within its control, through, to and from St. Louis and destined to cross the Mississippi River at St. Louis."

2. Since the agreement of October 1st, 1889, the following additional lines became parties thereto, as proprietary companies, namely: B. & O. S. W., as successor of Ohio & Mississippi Railroad Company, St. L. & S. F., the St. L., V. and T. H., the C., R. I. & P., the Southern, the Illinois Central, the C. & A. the C., B. & Q., and the M., K. C. & T.

3. The Terminal Association since October 1st, 1889, had acquired additional properties, but its terminal facilities in St. Louis and East St. Louis were inadequate and in order to borrow additional money the trust agreement of December 16, 1902, was entered into.

4. The Terminal Association, as a part of the plan of inducement for the sale of its new bonds entered into an additional agreement, dated December 16, 1902, with its proprietary companies, said additional agreement providing, among other things, that "The proprietary companies will forever make use of the properties of the Terminal Association granted under said agreement of October 1, 1889, for all passenger and freight traffic within the control,
162 through to and from St. Louis and destined to cross the Mississippi River."

5. The rest of the trust agreement contained provisions furnishing additional security to mortgage bonds of the Terminal Association.

The Terminal Railroad Association has an Executive Committee, consisting of Mr. T. C. Powell, of the Southern; C. E. Schaff, of the C. C. C. & St. L.; Mr. Bent, of the B. & O.; Mr. Middleton of the Iron Mountain; Mr. Gray of the Frisco and Mr. Miller of the Wabash. The powers and duties of that Committee are the management of the property under the supervision of the board; all matters pertaining to development are acted upon by this committee and are referred by recommendation to the board. All the proprietary lines, members of the Terminal, are members of the "General Managers Association," and some of the tenant lines are also members. The officers and directors of the General Managers Association are: W. S. McChesney, Jr., Chairman; Mr. F. E. Anderson, Secretary. I will furnish a list of the officers.

(The list was furnished later by Mr. McChesney, and filed with the record, but not marked as an exhibit; it shows as members of the St. Louis Managers Association the same lines of railway which are proprietary members of the Terminal Railroad Association; it also shows as the officers of the St. Louis Managers Association, Mr. McChesney as Chairman, and Mr. F. E. Anderson as Secretary, and contains a statement that there is no Board of Directors.)

I am not familiar with the organization called "The Terminal Committee of the Western Trunk Line Association." We are not represented in it, and I am not an officer of it. I think there is
163 such an organization, but do not know of whom it is composed nor who its officers are. I have no information concerning it. The St. Louis lines, which are not proprietary lines of the Terminal Association are the St. Louis South Western and the Chicago, Peoria and St. Louis; that is practically all; the Mobile & Ohio is indirectly a member, I mean through its relation with the Southern Railway. All St. Louis lines, except the St. Louis Southwestern and C. P. & St. L. are either members of the Terminal Railroad Association or are controlled by members of it. The lines of railway and facilities that constitute the Terminal, or which the Terminal owns and controls, are the Union Station, the Eads Bridge, and under lease side tracks

running from Seventh street to Compton avenue, the outer belt, the St. Louis Terminal Railway, which is the inner belt, the outer belt, and the St Louis Transfer Railway, which is the Wiggins Ferry property. The proprietary lines own the stock of the Wiggins Ferry Company, and its property; you might say it is a part of the Terminal, though not controlled by the Terminal. The St. Louis Merchants Bridge Terminal Railroad Company is a separate organization, but the Terminal owns the majority of the stock. The Merchants Bridge is controlled by the St. Louis Merchants Terminal Association and is leased to one of the subsidiary lines. The Terminal controls the Merchants Bridge by stock ownership. The East St. Louis Connecting Railway is a subsidiary company of the Wiggins Ferry and bears the same relation to the Terminal as the St.
164 Louis Transfer Railway. Its stock is controlled by the Wiggins Ferry and the stock of the Wiggins Ferry is owned by the proprietary lines. In that way, I suppose the Terminal indirectly controls it. The majority of the stock of the East St. Louis & Carondelet Railway is owned by the Terminal. Also the St. Louis Belt and the Illinois Transfer and the Illinois and Granite City and Madison Belt Railway and the Interstate Car Transfer Company. So that all the companies named are either directly controlled by the Terminal Railroad Association or else by some one or more of the proprietary lines, members of the Terminal Railroad Association, but they are not all operated by the Terminal. Thus, the Wiggins Ferry and Merchants Bridge are separte ogranizations. We do not operate over their tracks, we interchange with them. We do not own, control or operate the Alton Bridge. We have no interest in it. The Terminal Railroad Association has no interest in it, and I cannot say what company operates over it, I cannot tell you; I don't know what company operates over the Alton Bridge. I cannot tell from my own knowledge, nor have I any idea who operates it. I can tell you the officers of the Alton Bridge, namely: Henry Miller of the Wabash, President; Ben McKeen of the Vandalia-Pennsylvania, Vice-President. I know the Venice & Carondelet Railway in East St. Louis; it is controlled by the Southern Railway, one of our proprietary lines. The Missouri Pacific operates a car transfer ferry down at Ivory station.

Either the Terminal Railroad Association or its members or the tenant lines of the Terminal Railroad Association own or
165 control all of the terminal facilities at St. Louis and East St. Louis and all means of communication between those two cities, with the exception of the Manufacturers Railway Company.

The Terminal Railroad Association has joint rates with each and all of its proprietary and tenant lines. The division of those rates varies. I can file one or two tariffs that will give you information about it. I haven't it in my head. They will show the divisions. I can't tell you about them, because I haven't them in mind. I will produce division sheets covering those divisions.

(Said divisions sheets have been filed with the record, but not marked as exhibits. They are division circular No. 6, effective Octo-

ber 15, 1909, and Supplement No. 1 thereto, effective December 15, 1909, issued by J. L. Penney, Traffic Manager.)

The Terminal Railroad Association has a fixed charge for service over the bridge. It applies to territory within the switching limits of St. Louis and East St. Louis. It does not apply on commodities originating in a 100-mile zone on the East Side. It is simply a fixed charge or service rate, not an arbitrary, applicable in the switching limits of East St. Louis, and St. Louis. It varies according to commodities, i. e. according to different classifications, but does not vary as to points of destination; that is, we do not get one division to Chicago and a different division to New York. It is a fixed division, a service or switching charge. It is regulated in our tariffs filed by the Terminal Railroad Association traffic department with the Interstate Commerce Commission. The divisions are on
166 a basis of the weight per hundred, that is on all trans-Mississippi traffic. In that respect the charge assessed by the Terminal Railroad Association differs from the charges which were formally allowed the Manufacturers Railway. They were on a car basis; ours is on a per-hundred-pounds basis; theirs was a per-car allowance. I am not familiar with the Manufacturers' allowances or tariffs. I know, however, that it is a per-car basis, I am familiar to that extent. I admit that on coal it was on a tonnage basis.

The coal rate to St. Louis from the 50-mile zone across the river is 52 cents; to East St. Louis, it is 32 cents; the Terminal's charge is 20 cents a ton. I should say about 30 per cent. of the business originating in the 100-mile zone across the river is made up of coal. I cannot say whether each of the proprietory and tenant lines of the Terminal individually give switching allowances or divisions to each of the other proprietory or tenant lines on deliveries in St. Louis. I cannot answer for the other railroads, I do not know whether that is the general custom in St. Louis. I do not know about the charges, switching and so forth of any of these lines in St. Louis except the Terminal. I have been in charge of the Terminal since May, 1900. The following railroads have terminals of their own in St. Louis: The Missouri Pacific, Iron Mountain, Wabash, Burlington, L. & N., Frisco, Rock Island and M., K. & T. That is all. The Terminal Railroad Association joins in the settlement of loss and damage claims with other railroads on practically a ten-mile basis, i. e., counting ten miles for our haul.

167 The question of cancellation of allowances to the Manufacturers Railway first came to my notice December 13th, 1909, and at the same time the question of cancellation of allowances to the Des Pres Valley Railway, Republic Iron & Steel Company, the St. Louis Baden & Terminal, Western Cable Railroad, Granite City & East St. Louis Terminal, Granite City & Mississippi Valley Ry., and the Granite City Alton & Eastern Ry., were brought to my attention. The subject had never been brought to my attention prior to that time. It was first called to my attention by a number of the executive officers of the St. Louis lines. I cannot say who was the first one. The matter was discussed informally at a meeting where

there were present Mr. Ross, I think Mr. McKeen, Mr. Miller—I have a list of them here. The meeting was not called for the purpose of discussing that question; it came up informally. I do not remember, I cannot say who brought it up at the meeting. I think all the gentlemen*t* present had something to say about it. I cannot say who broached it. It had not been the subject of correspondence between me and any of them before that time. It just came up then in an informal way. I think it came up in connection—with the newspaper accounts that Mr. Moore had given to be published about what they had proposed to do, about building belt lines all over the country, over the East and the West Side. I think that brought out the discussion. I mean Mr. Moore, President of the Manufacturers Railway Company. I noticed he gave interviews to the papers, and

168 I think it is a matter of record in the files of the St. Louis paper, about the probability existing of building lines on two sides of the river, and that naturally branched into the question of absorption. The article which appeared in the papers concerning an extension of the lines of the Manufacturers Railway did not bring the matter to my particular attention especially, but the gentlemen that were present; that is the way the subject happened to come up. The discussion took place after a meeting of the directors of the Terminal Railway Company, but not at the meeting. It was an executive officers' meeting, and at their request I sent a telegram that you asked me to produce, the telegram of December, 1909. The meeting was a regular board meeting of the Terminal, which had adjourned, and then afterwards this came up informally between the gentlemen present. There were present Mr. Miller of the Wabash, Mr. Ross of the Chicago & Alton, Mr. McKeen of the Vandalia —I have forgotten, there were eight all told. I can submit a list. I cannot recall whether there was a record kept of the meeting, but have a list of those present, and will produce it. That meeting was on the 13th.

The next thing I did was to call a meeting at the request of the gentlemen present, but just who requested it, I cannot remember. I think they all wanted it. At no time has the Terminal had joint rates with the Manufacturers Railway Company. The Wiggins Ferry, i. e., the St. Louis Transfer Railway, makes delivery to the Manufacturers Railway.

169 I have before me my telegram calling the meeting. It is addressed to the gentlemen, namely, C. C. F. Bent, George H. Ross, C. E. Schaff, J. T. Harahan, T. C. Powell, G. E. Evans, C. R. Gray, F. E. Ward, Henry Miller, T. O. Melchor, R. V. Taylor, F. H. Britton, B. L. Winchell, J. T. Ramsey, A. A. Allen, and C. S. Clark. The telegram was dated December 13, 1909, and read as follows:

"At a meeting of a number of executive officers of the St. Louis lines today, I was requested to call a meeting at my office, Monday, December 20, at 10 o'clock a. m., for the purpose of considering the issuance of transportation and the excessive absorption allowances to industrial lines. Those present at the meeting today think

the matter is of such importance that a meeting of the executive officers of all St. Louis lines should be held. Will you attend the meeting, or if not, will you be authoritatively represented. After receiving replies, will let you know if all lines will be represented. W. S. McChesney, Jr."

Later, I sent another telegram to these same gentlemen, dated December 15, 1909, signed by me and reading:

"Referring to my telegram 13th inst., requesting meeting of executive officers of the St. Louis lines on 20th instant for the purpose of considering excessive absorptions allowed to industrial lines, I would respectively suggest that you ascertain the amount of money paid by your company by reason of this absorption to industrial lines in St. Louis and East St. Louis territory during the past year."

The meeting was held December 20, as called, and a decision was reached at the meeting. I think all the gentlemen to whom my notice was sent were present at the meeting. I think everybody had
something to say. I began the meeting by saying it was a
170 meeting of the St. Louis and East St. Louis lines, called at the
suggestion of a number of executive officers for the purpose of considering the excessive allowances made to industrial lines in St. Louis and East St. Louis territory. I opened the meeting with that remark, and they asked me to preside. Here is a list of the gentlemen present, and the lines represented: B. & O., Edward Hart, Jr., Asst. General Freight Agent; C. & A., C. A. King, Freight Traffic Manager; C., B. & Q., F. E. Ward, General Manager; C., C. C. & St. L., G. H. Ingalls, Freight Traffic Manager; C. & E. I., C. R. Gray, and F. C. Reilly; C., P. & St. L., C. W. Galligan, General Freight Agent; C., R. I. & P., A. E. Sweet, Asst. to President; Illinois Central, J. T. Harahan, President; L. & N., G. E. Evans, 4th Vice-President; Missouri Pacific and Iron Mountain, J. M. Johnson, V. P., and M. C. Markham, Asst. to V. P.; M., K. & T., C. Haile, Vice President; St. L. & S. F., C. R. Gray, Vice-President; Southern Railway, T. C. Powell, Vice-President, and R. A. Campbell, General Freight Agent; T., St. L. & W., C. A. King, Freight Traffic Manager; Wabash, Henry Miller, Vice-President and General Manager; Vandalia, B. McKeen, General Manager; Cotton Belt, C. W. Nelson, Asst. General Manager.

At that meeting a list was submitted of the lines about which this question of absorption was discussed. I have such a list. It was probably made up prior to the meeting, and refers to the industrial
lines. I was requested by the executive officers to ascertain
171 the industrial lines in the St. Louis territory, and I suppose
I presented it at the meeting. The list is as follows:

"Manufacturers Ry. Co. (Anheuser-Busch B. Co.)
De Peres Valley Ry. (Scullin, Gallagher Iron & Steel Co.)
Republic Iron & Steel Co. (Republic Iron & Steel Co.)
St. Louis Baden & Terminal. (St. Louis Car Co.)
Western Cable Railroad. (Lemp Brewing Co.)
Granite City & East St. Louis Terminal. (Amer. Steel Fdrys.)

Granite City & Mississippi River Ry. (Commonwealth Steel Co.)
Granite City, Alton & Eastern Ry. (Corn Prod. Refining Co.)"

In the list I gave the names of the roads and then of the industries owning the roads, that is I gave the industry that I understood owned the roads. I do not known of my own knowledge about the ownership, as to any of them. I think I got the list by asking our traffic department to furnish me a list of the so-called industrial lines in St. Louis and East St. Louis territory. It was my endeavor to make up a list of all such lines in that territory. I did not include the Union Stock Yards Railroad Company over at East St. Louis. I do not know why I did not. It is not regarded as an industrial line. Its tracks are in the stock yards. It serves the stock yards plants, and the industries located in the stock yards. The railroads do not grant divisions to that road, but I think they probably allow them trackage on some freight. The subject of that road did not come up at that meeting. If there was any discussion at all
172 I do not remember it, but that road was not included in my list, and it was not included in the action taken at the meeting, but it is within the switching limits of East St. Louis.

I have with me the minutes of that meeting of December 20, 1909. The copy of minutes (Exhibit No. 2), is as follows:

"It is the sense of this meeting that the following notice be given by the freight traffic officer of each railroad to each industrial road separately.

These letters, fully prepared, to be sent to Mr. McChesney for mailing.

"DEAR SIR:

(*a*) 'As there exists great doubt as to whether the present allowances to your company for service in and around St. Louis and East St. Louis are legal or reasonable, the —— Railroad announces that on and after March 1, 1910, no allowance will be made to your company. (—);

(*b*) 'and that it will submit to the Interstate Commerce Commission, for ruling, any application for such allowance, and will be governed by the ruling of said Commission in each case.

Yours truly, etc.

—— ——"

"The following tariffs will be canceled March 1, 1910:

Tariffs to be cancelled and notices canceling said allowances to be filed with Mr. McChesney on or before Jan. 5, 1910. These tariffs and notices to be checked by Mr. McChesney and list made complete so that no tariffs will be overlooked, and when complete to be forwarded by Mr. McChesney to the Interstate Commerce Commission."

173 "The following industrial roads are those now being allowed switching:

Manufacturers Railway Co.
Des Peres Valley Railway.
Republic Iron & Steel Co.

St. Louis Baden & Terminal.
Western Cable Railroad.
Granite City and East St. Louis Terminal.
Granite City & Mississippi Valley Ry.
Granite City, Alton and Eastern Ry."

"The —— Railroad will not issue any annual, term or trip passes to any officer or employe of the above named companies, firms or corporations."

I have the letter of December 20, 1909, which I wrote to each of the lines, sending them copy of the minutes just introduced in evidence. The letters were sent to each of the gentlemen who were present at the meeting of December 20, 1909, and read as follows:

"DEAR SIR: I attach copy of resolutions adopted at the meeting of the St. Louis and East St. Louis lines held in my office today, at which you were present.

As some of the lines did not wish to be bound by a ruling of the Interstate Commerce Commission in connection with this matter, the letter given in attached was divided into two parts. Part (*a*) is positive with all the lines; (*b*) is left optional.

Yours truly,

W. S. McCHESNEY, JR.,
President and Gen. Mgr."

This record shows it was signed by me as President and General Manager. That was a mistake of the stenographer. The stenographer made this slip, and I did not notice it at the time, but it was an error. They went out that way, but it was an error. Part
174 "*a*" of the resolution attached to the letter to be sent with the cancellation notices was to be used by the lines which did not want to be bound by the action of the Commission.

"Examiner Hillyer: How did you expect the Commission to act in that matter, under the act to regulate commerce, or merely as voluntary arbitrators?

Mr. McChesney: I suppose under the act to regulate commerce, or as an arbitrator to arbitrate the matter, whether the allowances are proper, and if proper, whether they are not excessive. That is the question."

I assumed that the Manufacturers Railway would give the Commission a chance to act.

"Mr. Cassoday: Then they used part "*b*" of the letter along with the uniform plan made and determined by the action of this committee.

"Mr. McChesney: As I recollect, the question was as to whether or not these allowances were illegal, and if legal, whether they were exorbitant. In other words to submit to the Interstate Commerce Commission the question of legality, and also the question of proper allowances.

"Mr. Cassoday: But the question of proper allowances could have

been decided without reference to the Commission. They could have agreed, could they not?

"Mr. McChesney: I don't know. I suppose if they had agreed upon it, it could have been adjusted."

The question of the United Stock Yards Railway Company did not come up at that meeting. I asked for a list of all industrial lines and I assume they did not include the Stock Yards road because it is not considered an industrial line.

Mr. Cassoday: But, if they are granting divisions to it, it stands in the same relation with the industrial lines.

175 Mr. McChesney: I did not know they granted divisions.

Mr. Cassoday: I say if they do, they would stand in the same position, and should have been in the list, should they not.

Mr. McChesney: It is (not) an incorporated road, as I understand it.

We make no allowances to the stock yards company, we switch in there, we only make a track allowance for the use of the track, of the yard track.

Mr. Cassoday: I said the Union Stock Yards Company, I believe it is the National.

Mr. McChesney: Yes, it is the same thing.

Examiner Hillyer: Can you state in the record clearly just what the distinctions are between the Union Stock Yards Company and the complainant in this case, the Manufacturers Railway Company, the distinguishing features which make them apply to one and not the other.

Mr. McChesney: I cannot, I do not know.

Examiner Hillyer: Is the distinction one of physical difference in the operation of tracks?

Mr. McChesney: No, one is incorporated, and the other is not. The National Stock Yards have tracks serving different pens for unloading stocks of all the roads that come in. They have industries located in the stock yards and the tracks in these yards serve these industries. I suppose the tracks of the Manufacturers Railway Company serve the Anheuser Brewery property in the same way.

Examiner Hillyer: In that connection, there would be no physical distinction.

Mr. McChesney: No, I should say not.

I cannot answer from memory what industries are served by the stock yards tracks. A number of them. There are pens, packing house plants of such and only such nature as would be located in the stock yards. I received the copies of letters prepared by

176 the different lines pursuant to the resolution. They came as a notice to each of the lines cancelling the absorption allowances. They came ready for mailing, but were not sealed up. They were in envelopes, and I probably checked them over and mailed them. I did not read them to see whether they adopted only the (a) part of the resolution or both parts. I received them scattered along between December 13th, and December 31st. I held them until I had received them all, then mailed them all at once to the Manu-

facturers Railway Company. I sent the others to the other companies at the same time.

"Examiner Hillyer: Mr. Cassoday read to you a long list of terminal companies at the beginning of your testimony, all of which it seems are controlled directly or indirectly by the Terminal Association. Can you now produce a list of terminal facilities upon which there has been for some reason a line of cleavage drawn. The Commission would like to know on just what ground that action was taken and that line of cleavage drawn, if you can state that.

Mr. McChesney: They are industrial roads owned by the plants. They are side tracks that furnish facilities for these plants and they incorporated them into a railroad for the purpose of getting an allowance for handling freight to and from that point. That is my understanding.

Examiner Hillyer: The condition you have just described in regard to this list, does not exist in regard to the list you testified about before.

Mr. McChesney: No, sir."

The last list I spoke of is embraced in my letter of December 31st, 1909. The Des Peres Valley Railway is at Scullin Gallagher's iron plant. I do not know that it serves anybody but that plant. The Republic Iron & Steel Company Railway is in East St. Louis at the plant of the Republic Iron & Steel Works. It does not
177 serve anyone besides that plant so far as I know. The St. Louis Baden & Terminal Railway is in North St. Louis, at the St. Louis Car Works. It serves no other industry to my knowledge. The Western Cable Railway serves Lemp Brewery. I do not know whether it serves anyone else. The Granite City & East St. Louis Terminal Railway is one of the Granite City plants, I think the Missouri Car and Foundry Company, if I remember correctly. I do not know whether it serves any other industry. The Granite City & Mississippi River Railroad is at one of the east side industrial plants. I do not know whether it serves any other industry. The Granite City, Alton & Easton Railroad is one of the east side industrial lines, owned I think by the Corn Products. I do not know whether it serves any other industry.

I put the industrial railroads in here without knowing whether they serve the public or not because I got them from the list that was made by our traffic people of industrial roads. I presented that list without knowing the facts or services rendered by the roads, except what I have told.

I had no interest in it, I was simply acting for the lines. I do not know how many industries, except Anheuser Busch Brewing Association, the Manufacturers Railway serves. I think it serves other industries. I do not know whether it is a large number. I have never been down over the road. I know very little about the road itself, but I put it in as one of those railroads. I do not know
how many miles of track it has. I made no investigation to
178 find out any of these things before I included it in the list.

I am not interested in the Manufacturers Railway. I only acted at the request of the executive officers. I do not know the

tonnage it handles, nor anything about its business. I do not know that the Terminal gets a good deal of business from it; most of its business moves through Wiggins Ferry and there is other tonnage in addition to the tonnage originating with the Anheuser-Busch Association. I should think there would be a considerable amount of it.

"Mr. Cassoday: But you made no investigation to find out how much, what the road was doing, what industries it was serving, or anything else at the time you made up that list and included it with these other lines?

Mr. McChesney: I did make as I recall it, too—I do not seem to have it here but after the meeting of December 13th, when this question was up, I wrote a letter to the President of the Superintendents' Association. I don't think you asked for that letter."

I asked him if he could ascertain the amount of interchange between the various industrial roads. I at the same time asked the roads to bring, as a matter of information, the amount that was paid by each of the lines to the industrial roads which were incorporated into the minutes. I did not get the information. If I had it, I would have given the industry from which the business originated.

I cannot tell whether the envelopes you show me are those in which the letters were received. I do not recognize any of the handwriting of the envelopes. I do not know in whose handwriting the word "Anheuser-Busch" is written on the M. K. & T. letter.
179 I do not know any of the writing. I do not think I ever saw those envelopes before. I do not remember how the letter from the Cotton Belt came. The envelope is not one of our own. I do not know whether we used our own envelopes, nor whether it came in a letter, nor whose handwriting is on any of the envelopes. I never saw the handwriting before to my knowledge. I do not know whether the handwriting was on the envelopes at the time I received them. I do not recall having received the envelopes. I did receive the letters in the envelopes, so I probably received the envelopes. I do not think we checked them. The address on the envelope "Care Anheuser-Busch Brewing Association," and so forth, was not put on at my direction. I do not know whether it was there when I received it. I do not remember seeing it.

I mailed a letter of cancellation, either according to form (*a*) of the resolution, or form- (*a*) and (*b*) together, from each of the defendant railroad companies, to the Manufacturers Railway Company. It was mailed from my office by my clerk on my instruction. They were held until I gave directions. My office checked them up before ordering them mailed, to see if a notice had been received from each of the roads present at that meeting. I had them checked by my assistants. The purpose of checking was to find out whether we had received all the notices and I intended to hold them all until I received them all. I have the letter of December 31st, that I wrote to each of the lines acknowledging receipt

of their letters. It was written to each of the gentlemen pres-
180 ent at the meeting of December 20th, namely: Edward Hart, Junior, of the B. & O., C. A. King of the C. & A., F. E. Ward of the C., B. & Q., G. H. Ingalls of the Big Four, C. R. Gray and F. C. Reilly of the C. & E. I., C. W. Galligan of the C. P. & St. L., A. E. Sweet and J. C. La Coste of the C., R. I. & P., J. T. Harrahan of the Illinois Central, G. E. Evans of the L. & N., J. M. Johnson of the Missouri Pacific, C. Haile of the M. K. & T., C. R. Gray and W. B. Biddle of the Frisco, T. C. Powell and R. A. Campbell of the Southern, Henry Miller of the Wabash, W. C. Maxwell of the Wabash, F. H. Britton of the Cotton Belt, and R. V. Taylor of the M. & O. Each letter was dated December 31st and read as follows:

"I have to-day written you that all lines have sent to me the notices to the industrial lines and that I have mailed them.

The resolution adopted at the meeting of December 20th, states that the tariffs to be cancelled and the notices canceling said allowances are to be filed with me on or before January 5th, 1910. These tariffs to be checked by me and when completed to be sent to the Interstate Commerce Commission.

It has been suggested that a meeting should be called to be attended by the traffic officials of the interested roads and by the persons on such roads who have to do with the issuance of the tariff, at which time the tariffs proper and proposed supplements thereto can be submitted and the entire situation checked over.

Will you arrange to have proper officer of your line attend a meeting at my office at 10.00 A. M. January 5, bringing with him tariffs to be cancelled and the notices cancelling said allowances in order that they may be checked over by all lines and then filed with the Interstate Commerce Commission. Yours truly, W. S. McChesney, Jr."

181 On December 31st, 1909, I wrote to all the roads a letter reading as follows:

"DEAR SIR: I have received from the following lines, viz., B. & O. S. W., C. & A. T. St. L. & W., C. C. C. & St. L., C., B. & Q., C. P. & St. L., Southern, Vandalia, Wabash, Illinois Central, L. & N. M. K. & T., Missouri Pacific and Iron Mountain, Mobile & Ohio, St. L. & S. F., C. & E. I., C. R. I. & P., St. L. S. W., notices of withdrawal of allowances to the following so-called industrial lines, viz., Manufacturers Railway, Des Peres Valley R. R., Republic Iron & Steel Company, St. Louis, Baden & Terminal R. R., Western Cable Railway, Granite City & East St. Louis Terminal R. R., Granite City & Mississippi River R. R., Granite City, Alton & Eastern R. R., and I have mailed these notices in accordance with the understanding reached at the meeting on December 20th. Yours truly, W. S. McChesney, Jr."

I received the cancellation notices from those roads. They came to my office.

I have here the proceedings of the meeting held January 5, 1910. I think it was a meeting of traffic officers of the various lines, that is all the lines mentioned that were parties to these tariffs. The

resolution adopted at the meeting of the St. Louis lines on December 5th, 1910, was as follows:

"Recommended that all St. Louis and East St. Louis absorption tariffs be amended to specifically provide that switching charges of the following roads will not be absorbed: Manufacturers Railway, Des Peres Valley R. R., Republic Iron & Steel Co., St. Louis Baden & Terminal R. R., Western Cable Railway, Granite City & East St. Louis Terminal R. R., Granite City & Mississippi River R. R., Granite City, Alton & Eastern R. R. Supplements accordingly to be filed with Mr. McChesney not later than January 10th, 1910, effective March 1, 1910.

182 Further recommended that a committee of five be appointed to immediately confer with the committee chairmen with a view to effective March 1, 1910, or as soon thereafter as applicable, arrange that the list of roads above mentioned be dropped as concurring carriers, similar action to be taken in connection with all individual issues."

That resolution is not signed by me, but in accordance with the resolution of cancellation, tariffs were sent to me and by me turned over to this committee of five of the lines represented. I have forgotten just who was on the committee. I will furnish you a list of them.

The list furnished for the record by Mr. McChesney, but not marked as an exhibit shows as the committee of five the following: G. W. Davis, General Freight Agent, Vandalia Railroad, Chairman, J. S. Brown, Assistant General Freight Agent, Illinois Central, W. A. Romback, Assistant General Freight Agent, Missouri Pacific Railway Company, John Fitzgerald, Superintendent Terminals, L. & N. Ry. Co., S. H. Johnson, Assistant Freight Traffic Manager, Rock Island.

The committee received these tariffs, then handed them to me and said they had checked them all over and found that the cancellation notices were proper. I was not present when they checked them over, and don't know what they did. The purpose of checking them over was to see that in each tariff that part of the tariff making the allowance to the industrial road was canceled, to be sure that each road canceled their allowances.

183 The committee brought the tariffs to me and said they checked them over and that they were all right. I did not check them myself, but filed them as they were presented with the Interstate Commerce Commission, sending them by mail. I understand that they all provided that they should become effective March 1st.

"Examiner Hillyer: Mr. McChesney testified he had a list of industrial roads and in your examination he testified they were industrial roads and that means they were cut out of this allowance. Will you bring out through his testimony or through the testimony of some other witness what industries are located on the lines of the terminal roads enumerated in his testimony this morning, which roads were not cut off from participating in the tariffs filed with the Interstate Commerce Commission.

Mr. Cassoday: You mean those owned or controlled by the Terminal Railroad Association?

Examiner Hillyer: Yes, I mean the industries located on those roads only.

Mr. Cassoday: Then, Mr. McChesney, just tell us what is the location of these various railroads, composed of, owned or controlled by the Terminal Railroad Association or the proprietary lines, tell us about the industries located on them.

Mr. McChesney: Take the St. Louis Terminal Railroad Association, the St. Louis Terminal Company is the belt line which you call the inner belt line running from Cary avenue west to Page avenue. There are a number of industries located on that line, about fifteen or twenty, I could make it complete by filing the information, if you want it. If you will pass that over, I will file a list here of the industries and subsidiary lines."

"Examiner Hillyer: All right. The record will not be complete on that point until you file that with the Commission.

Mr. McChesney: I will file it."

Mr. McChesney filed Terminal Railroad Association of St.
184 Louis Freight Tariff number 23-A, I. C. C. Number 85, issued December 10th, 1909, effective, January 20th, 1910; also Freight Tariff 23-B, I. C. C. Number 87, issued May 20th, 1910, effective July 1, 1910, both of which tariffs contain a list of such industries. These tariffs were not marked as exhibits.

Each of the lines concerning which I have just testified is either owned or controlled by the Terminal Railroad Association or by one of the proprietary companies. I understand that what you want is industries located on the lines of the Terminal Company and on subsidiary lines of the Terminal Company. None of these industries are owned by the Terminal Company and none of them own the Terminal Company or are stockholders of it that I know of.

Cross-examination by Mr. Jeffery:

The Terminal Railroad Association gets paid for its services from East St. Louis to delivery points in St. Louis. I suppose the rates, quoting through, are named in the tariff, but we get a fixed allowance, i. e., we get an allowance for the car moving over the Terminal lines whether destined to Kansas City or Seattle. My letter which I testified was signed as "President and General Manager of the Terminal" should have been signed as "Chairman."

Redirect examination by Mr. Cassoday:

I do not know of my own knowledge anything about the stock ownership of the Manufacturers' Railway. The Terminal has con-
nection with all the coal roads and gives them the same serv-
185 ice that we do any other carrier. We have connection with all the lines at East St. Louis and give them all the same service, but they cannot get into St. Louis except over our tracks or the tracks of a proprietary line, or they could build into St. Louis the same way we had to originally.

F. E. ANDERSON, testified:

I am Assistant to the President of the Terminal Association. I saw the letters that came in from the different lines of which Mr. McChesney spoke. I think the envelopes you show me are those in which the letters from the lines were received. I recognize some of the handwriting as my own. That on the M. K. T. envelope is not mine, nor the Rock Island, nor the Alton, nor the Illinois Central nor the C., B. & Q., nor the Wabash, nor the Missouri Pacific, nor the M. & O., nor the L. & N., nor the Vandalia, nor the C. C. C. & St. L., nor the B. & O., nor the St. Louis & San Francisco, nor the Rock Island. The New York Central is. They are all in the same handwriting. It is the handwriting of J. L. Penney, Traffic Manager of the Terminal. It was put on the envelopes in our office—the New York Central in my handwriting, and all the others in his handwriting—that is the writing below the typewritten address. The part "Anheuser-Busch Brewing Association," I did not see who put that on. The envelopes were all addressed to Mr. Muehlberg, Traffic Manager of the Manufacturers' Railway Company, St. Louis, Missouri. Instead of sending them to the railroad
186 office, I sent them to the brewery office, care of the brewery as written there. I don't know whether I directed Mr. Penney to send them to the Anheuser-Busch Brewing Association. He did that of his own notion. I knew of Mr. Muehlberg. It was in my office that he (Penney) put on one envelope the words "Lemp Brewing Association." I don't know whether he so directed it. I do know that those I saw, he addressed c/o Anheuser-Busch Brewing Association. I myself mailed the letters at the Annex Station, Eighteenth and Market, in the street mail box. When the cancellation tariffs came in, I did not check them over, but did have to do with the mailing of them. They were the tariffs from each of the roads, defendants in this case. I know that they were mailed to the Commission from our office.

Cross-examination by Mr. Jeffery:

I don't know that Mr. Muehlberg is Traffic Manager of the Lemp Brewing Company. That was a typographical error. I don't know where Mr. Muehlberg's office is, but it is in the Anheuser-Busch Brewing Association.

Redirect examination by Mr. Cassoday:

I don't know that the Manufacturers Railway Company's office is in the South Side Bank Building, Broadway and Pestalozzi streets, nor that Mr. Muehlberg's office is there. I always understood him to be connected with the Anheuser-Busch Brewing Association. I do know that he is Traffic Manager of the Manufacturers
187 Railway, and I preferred to address him as connected with the brewery. He is also Traffic Manager of the brewery. I don't know that the location of the Manufacturers Railway appears in the Railroad Guide, Telephone Directory, City Directory, and

everything else, as in the South Side Bank Building. I never looked it up. I was never in their office.

Exhibit 3, shows: (1) Articles of Association of the Manufacturers Railway Company. The Articles show that the Manufacturers Railway Company was incorporated April 14, 1887, as a railroad corporation, under the general statutes of the State of Missouri, relating to common carriers, for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property.

The incorporators were:

Adolphus Busch	240 shares.
Erwin Spraul	2 shares.
William D. Orthwein	2 shares.
George F. Meyer	2 shares.
Rudolph Stecher	2 shares.
Leopold Methudy	2 shares.

The road provided by the charter was to run from a point on the west bank of the Mississippi River, between Utah and Dorcas streets, westwardly to a point on Arsenal street, between Ninth and Eleventh streets, with branches to the factories situated north and south in the main line: the length of the road to be two miles. The capital stock was $25,000, divided into 250 shares of $100 each. The incorporators were to be the directors, and they subscribed for the stock in the proportions above stated.

188 (2) Increase of capital stock. On May 18, 1905, the capital stock of the Manufacturers Railway was increased to $100,000, pursuant to the method prescribed by the laws of the State of Missouri for the increase of stock in railroad corporations.

(3) Increase of stock. On January 15, 1906, the stock of the Manufacturers Railway Company was further increased to $250,000, pursuant to the method prescribed by the laws of the State of Missouri for the increase of capital stock in railroad corporations.

Exhibit 4 is an extension of charter. On February 9, 1905, the Manufacturers Railway Company, pursuant to the requirements of the laws of Missouri, relating to railroad corporations, filed in the office of the Secretary of State of Missouri, a certified copy of the resolution of the Board, extending the lines of Manufacturers Railway Company as follows:

(*a*) An extension or branch line from a point on the then main line in city block 2014, running thence north and west to the east line of Thirteenth street, and between Lynch and Pestalozzi, four-fifths of a mile, at a proposed cost of $25,000.

(*b*) An extension or branch from the point where the then main line crossed Second street; thence northerly, and in a northerly direction to Poplar street, between Second and Third street-, a proposed length of 2.1 miles, at a proposed cost of $70,000.

(*c*) An extension or branch line, beginning at a point on the main line, where it crossed Second street, thence southerly to a point

on Potomac street, between Second and Broadway, a length of three-fifths of a mile, at a proposed cost of $20,000.

189 Exhibit 4-A is an additional extension to line. On January 18, 1906, the Manufacturers Railway Company filed in the office of the Secretary of State in Missouri, a certified copy of resolution of the Board further extending its line: beginning at a point on its line, in Second street, between Utah and Arsenal streets, running thence in a southerly and westerly direction to a point on the line of the city limits of the City of St. Louis, 400 feet more or less west of the Morgan Ford Road, length six miles, and a proposed cost of $90,000.

Exhibit 5, is Ordinance No. 13,998 of the Municipal Assembly of the City of St Louis, approved April 12, 1887. This ordinance provided in part:

Authority was granted to Adolphus Busch et al., their successors or assigns, when incorporated as the Manufacturers Railway Company, to construct, maintain and operate a steam railway, from a point west of Ninth street, in city block 1962, between Arsenal and Pestalozzi streets, thence east over upon and across Ninth street, Seventh street, Broadway, Third street, Second street, and the intervening alleys, to a point in the tracks of the St. Louis, Iron Mountain & Southern Railway Company. The grant was for fifty years.

Exhibit 6 is the formal acceptance of said city ordinance No. 13,998.

Exhibit 7 is a copy of the bond for $20,000, filed by the Manufacturers Railway Company with the city, as required by said ordinance No. 13,998.

Exhibit 8 is Ordinance No. 21,393 of the Municipal Assem-
190 bly of the City of St. Louis, passed February 23, 1904.

It granted permission to the Manufacturers Railway Company to construct, maintain and operate a steam railway across Pestalozzi street, the center line of the track to be distant westwardly from the center line of Ninth street 186 feet more or less.

It also requires the Railway Company to file with the City Register a bond for $2,000.

Exhibit 9 is the acceptance filed by the Manufacturers Railway Company with the city, April 30, 1904, accepting the said ordinance No. 21,393 and also the bond of the Railway Company for $2,000, given pursuant thereto.

Exhibit 10 is an Ordinance No. 21,426 of the Municipal Assembly of the City of St. Louis, approved April 4, 1904.

It grants authority to the Manufacturers Railway Company, to construct, maintain and operate two tracks across and along Ninth street, one beginning at a point on the east line of Ninth street, 140 feet south of the south line of Pestalozzi street, thence passing across Ninth street, to a point in its west line, about 145 feet south of the south line of Pestalozzi street. The other track, beginning at a point in the east line of Ninth street, about 185 feet south of the south line of Pestalozzi street, thence passing across Ninth street in a southwesterly direction, and along the west side of Ninth street to a point

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8 feet from the west line of Ninth street, and about 440 feet south of the south line of Pestalozzi street.

191 Exhibit 11 is the acceptance of said ordinance No. 21,426, and the bond for $5,000 given pursuant thereto.

Exhibit 12 is Ordinance No. 21,573 of the Municipal Assembly of the City of St Louis, approved October 7, 1904.

It grants authority to the Railway Company to construct, maintain and operate tracks along what is now known and referred to in the record as the River Yard and River tracks of the Manufacturers Railway Company, including a part of the incline leading to the viaduct by which the Railway Company's line now crosses the tracks of the Iron Mountain.

A considerable part of the land on which the tracks authorized by the ordinance were laid, constituted a public wharf, owned by the City of St. Louis. Therefore, the ordinance authorized and directed proper city officers to lease to the Manufacturers Railway Company for thirty years the necessary portion of the wharf, upon terms and conditions specified in the ordinance, at an annual rental to be paid by the Manufacturers Railway Company, to the city, of $4,000 per annum.

It was also provided that the privileges granted by the lease, authorized in the ordinance were not to be assigned, except with the city's consent.

Exhibit 13 is the acceptance of the ordinance No. 21,573, and the bond for $5,000 given pursuant to the ordinance.

192 Exhibit 14 is the lease dated November 7, 1904, from the City of St. Louis to the Railway Company, executed and delivered pursuant to said ordinance No. 21,573, by which the city leased to the Railway Company for thirty years beginning October 17, 1904, and ending October 17, 1934, that portion of the wharf provided by the ordinance to be used by the Railway Company for constructing, maintaining or operating the railroad tracks and auxiliary structures at an annual rental of $4,000, payable semi-annually, with a bond by lessee for $5,000 included in and made a part of the lease.

Exhibit 15 is Ordinance No. 5403 of the Municipal Assembly of the City of St. Louis, approved August 6, 1864, establishing the wharf line. The wharf lease from the City to the Railway Company last above, refers, in describing the property leased, to the wharf as defined in Ordinance No. 5403. This ordinance—Exhibit 15, contains a specific description of said wharf.

Exhibit 16 is Ordinance No. 21236 of the Municipal Assembly of the City of St. Louis, approved October 22, 1903; the lease from the City to the Manufacturers Railway Company in describing the leased premises refers to the eastern boundary line of the wharf as established by Ordinance No. 21236. This ordinance contains a specific description in extenso of the east line of the wharf property leased as aforesaid.

Exhibit 17 is Ordinance No. 22025 of the Municipal Assembly of

the City of St. Louis, approved April 8, 1905, providing in part as follows:

It grants to the Railway Company authority to construct,
193 maintain and operate its road along Dorcas street from First street to a point in city block No. 1412, being what is referred to in the record as the "Dorcas street line," also along Eleventh street between Pestalozzi and Lynch streets, being a spur from the Dorcas street line, also along Second street from Potomac street to Poplar treet, being what is known and referred to in the record as the "Second street line" north and the "Second street line" south of Dorcas street.

The Railway Company was also authorized to construct, maintain and operate switch tracks on and across the streets named in the ordinance at such places as might be necessary for the operation of the tracks expressly named in the franchise.

The ordinance further required the Railway Company to begin the construction of the authorized work within six months, to complete it within three years, and further required and the Railway Company agreed:

"Within five years from and after the taking effect of this ordinance, to provide two inclines, one on the east bank of the Mississippi river and one on the west bank of the Mississippi river, together with a belt line on the east side of said river not less than seven miles in length, and that it will operate said incline and said belt line with the necessary transfer boats or ferries for transferring cars between said inclines."

The ordinance imposes on the Railway Company a liability for liquidated damages of $25,000 and forfeiture of the franchise, if it fail to build the tracks on Second street or fail to build and complete the inclines, transfer boats, ferries and the belt line on
194 the east side of the Mississippi river, as required in the ordinance.

The ordinance further required the Railway Company to pay to the City of St. Louis for the franchise $5,000 per annum for a term beginning three years from the date the ordinance became effective, and after the expiration of thirteen years, then an additional $5,000 per annum, i. e., $10,000.00.

(6) The ordinance further required the Railway Company to:

"Transfer and switch the cars to or from any connecting lines or switches, or to or from any lines or switches with which said company may hereafter connect, within the limits of the City of St. Louis, and its charges for such switching include the transportation to or from connecting lines and switches, and including the return of all empty cars which have been handled under load or which are to be loaded, shall not exceed $2 per car; and the charges for switching and transferring loaded cars from or to any connecting lines or switches on the east side of the Mississippi River and within a radius of ten miles from the city hall in the City of East St. Louis, to or from any connecting line or switches on the west side of the Mississippi River within the limits of the City of St. Louis includ-

ing on both sides of said river any switches or connections which may hereafter be provided within territories designated, shall not exceed 1½ cents per hundred pounds of freight, with a minimum charge of $4 per car, and no charge shall be made for empty cars which have been handled under load or which are to be loaded."

(7) The ordinance further required the Railway Company in accepting it to expressly agree:

"To permit any other railway company to operate its locomotives and cars or trains of cars upon the track herein authorized to
195 be laid, constructed and operated in the City of St. Louis under such rules and regulations regarding the manner of use and possession to said Manufacturers Railway Company as may be provided by the laws of the State of Missouri now in force or hereafter enacted and in force."

Exhibit 18 is the acceptance of said ordinance 22,025 together with the bond for $50,000 required by it.

Exhibit 19 is ordinance No. 22,996 of the Municipal Assembly of the City of St. Louis, approved April 1st, 1907.

It grants to the Railway Company authority to construct, maintain and operate its road from a point in Second street near Utah, in a southerly direction, to a point in the city limit line about 400 feet west along the Morgan Ford Road, and along and across intervening streets and alleys, and so forth, being a proposed extension of line referred to in the record as the Southwest or City Limits Extension.

It requires that wherever the railway crosses certain streets named the tracks shall be depressed under said streets and alleys, and "said Railway Company shall at its own cost and expense carry the streets over the tracks by substantial bridges of metal and concrete with abutments of concrete or masonry," etc. Where the line crosses Kansas street the track was required to be depressed, and the street to be carried over by a substantial bridge, all bridges, roadways and sidewalks to be constructed satisfactory to the city.
196 It further required the Railway Company to entirely house and cover that part of the proposed line between Nebraska avenue and Minnesota avenue.

It required the work to be commenced within six months and to be completed within five years, on penalty of $25,000.

Section 6 provides:

"The Manufacturers Railway Company expressly agrees in the acceptance of this ordinance, to permit any other railway company to operate its locomotives and cars or trains of cars, both passenger and freight, upon the tracks herein authorized to be laid, under such rules and regulations regarding the manner of use * * * as may be provided by the laws of the State of Missouri," etc.

Section 7 provides:

"Said Manufacturers Railway Company shall not transfer, assign, sell, lease or in any wise dispose of, directly or indirectly to any other terminal company or railroad company owning, operating or controlling terminal or other railroad facilities in or adjacent to the City of St. Louis, or to any bridge, ferry or transfer company, the

rights, privileges and franchises hereby granted. But, said Manufacturers Railway Company shall be run, operated and managed independently by its own officers and stockholders in free and fair and open competition at all times. Any violation of the conditions and provisions of this section shall cause a forfeiture of all of the rights and privileges herein granted," etc.

Section 8 provides:

"Said Manufacturers Railway Company shall switch and transfer cars from any connecting line or switch or point on its own line within the limits of the City of St. Louis to any other connecting line or switch or points on its own line within the limits of the
197 City of St. Louis, and its charges for such switching, including the transportation to or from connecting lines and switches, and including return of all empty cars which have been handled under load or which are to be loaded, shall not exceed $2 per car; and the charges for switching and transfer-ing loaded cars from or to any connecting road or switches on the east side of the Mississippi river within a radius of ten miles from the city hall in the City of East St. Louis to or from any connecting line or switches on the east side of the Mississippi river within the limits of the City of St. Louis, including on both sides of said river any switches or connections which may hereafter be provided within the territories designated, shall not exceed 1½ cents per hundred pounds of freight, with a minimum charge of $4 per car, and no charge shall be made for empty cars which have been handled under load or which are to be loaded. The charges above specified shall include all charges for any and all services rendered by said Manufacturers Railway Company in transporting or switching cars of freight on all of its tracks and road, whether said tracks or road be authorized to be constructed or maintained by this ordinance, or by ordinance No. 22,025, or whether otherwise authorized."

The ordinance further required the Manufacturers Railway Company to pay to the City of St. Louis annually in advance during the franchise period, and in addition to amounts required by provision of the ordinances, the sum of $5,000, payments to begin five years from the date the ordinance became effective. Any violation of the provisions of the ordinance is made ground for forfeiture thereof.

Exhibit 20 is the acceptance of ordinance number 22,996, and the bond of $50,000 given in pursuance thereto.

Exhibit 21 is a lease dated April 21, 1887, from Anheuser-
198 Busch Brewing Association, to Manufacturers Railway Company, leasing right of way over property therein described on which the Pestalozzi street main line was then laid. The term was 99 years from date of lease, the annual rent $1,500, payable quarterly, and the lease constituted in part a sub-lease of some of the property covered by deed, requiring the lessee to perform the conditions of the original lease as to the property sub-let.

This lease is recorded in the office of the Recorder of Deeds, City of St. Louis, on June 4, 1887, in book 833, page 62.

Exhibit 22, is a lease dated December 31, 1908, from Anheuser-

Busch Brewing Association, to Manufacturers Railway Company. The term is ten years from January 1, 1909. The grant is of

"all the land situated between Dorcas street on the north, First street on the east, Arsenal street on the south and Thirteenth street on the west, in said City of St. Louis, whereon it (lessor) has laid and has in operation certain railway tracks; excluding therefrom certain strips of land on which said association owns sidetracks for the purposes of its business, commonly known as 'siding.' The land hereby leased, together with the sidetracks and sidings are shown in detail on the blueprint hereto attached and made a part hereof, reserving unto itself, as a rental therefor, the sum of $2,000 per month payable in advance.

And said association further gives and grants to said railway the rights and privilege to use and operate the aforesaid siding for railway purposes, upon condition, however, that such use will never interfere with the reasonable use thereof by said association, of which said association shall be the sole and only judge. In
199 consideration of the foregoing privileges to use said sidings, said railway agrees and covenants to and with said association to maintain the same and keep them in constant order and repair at its sole cost and expense. Said association further agrees to pay taxes imposed upon the lands hereby leased."

G. F. MOORE testified:

I am President of the Manufacturers Railway Company, and became such at the annual meeting of April, 1909. Before that I was acting president and general manager for about two months. I first went with the company about February 22, 1909. The office of the Railway Company is in the South Side Bank Building, at the corner of Broadway and Pestalozzi streets.

The office of the Anheuser-Busch Brewing Association is not in that building, and to my knowledge never was; anyway not since my connection with the road.

I first entered the railway service about 1880. From 1880 to 1909 I was in the railroad service with various railroads in local freight offices, as solicitor and car tracer, in charge of terminals, freight agent in charge of terminals, traveling freight agent, chief traveling auditor in charge of terminal station accounts and outside accounting, auditor, traffic manager and superintendent.

I took the Civil Service examination for Examiner for the Interstate Commerce Commission, was appointed, and accepted a
200 position in February, 1908, remaining with the Commission a year, when I came to St. Louis to my present position. While I was with the Commission, my principal work was the investigation of joint facilities and the investigation of small common carriers, switching and terminal companies, industrial lines and what are now commonly known as tap lines.

The stock ownership of the Manufacturers Railway Company is as follows:

Certificate number.	Number of shares.	Issued to—	Owned by—
2	2	W. D. Orthwein	Adolphus Busch
5	2	George F. Meyer	"
8	8	W. D. Orthwein	"
21	1	Otto H. Rassfeld	"
22	1	Edward A. Faust	"
27	1	George F. Moore	"
29	185	Adolph Busch	"
30	35	August A. Busch	August A. Busch
32	1	Henry Menzenwerth	"
33	1	A. C. F. Meyer	"
34	1	Charles E. Coons	"
28	12	Schuttler Estate	Schuttler Estate
Total	250		

Exhibit 23 is a lease dated April 16, 1888, from Manufacturers Railway Company, lessor, to St. Louis, Iron Mountain & Southern Railway Company, lessee. It grants to the lessee the sole and exclusive right for the term of ten years from the date of the lease, to operate the railway line of the Manufacturers Railway Company.

201 Exhibit 24 is a lease dated April 17, 1898, from Manufacturers Railway Company, lessor, to St. Louis, Iron Mountain & Southern Railway Company, lessee, granting to the lessee the sole and exclusive right and privilege to operate the lines of the lessor's railway for a term of ten years, from the date of the lease.

At the time I came here this road, aside from an extension north of Rutger street, on Second street, for about two blocks, and with the exception of certain other switches and side tracks that we have built since I was here, was practically as the road is now. The main line extended from First street west on Dorcas to Thirteenth, and from First street west along the line of what would be Pestalozzi street, or near it, to the west of Ninth street, making the general form of a letter U, with the northern main line four blocks longer than the main Pestalozzi street line. In this described area, the main service was then and is now rendered to Anheuser-Busch Brewing Association, but incident to that service, there were team tracks at Eleventh street, Thirteenth street and Ninth street, which then served, to some extent other outside industries, and this service has materially increased in the last few months. There was also a public yard known as the Post Office Yard on Broadway, which was then largely used for storage purposes, but has, for a number of months since, been devoted wholly to public business of about fifteen or sixteen cars a day; also an expensive and elaborate coal yard had been finished when I got there, the Schroeter Coal Company

202 occupying it, and ample provision had been made to serve other outside interests. The Second street track was then constructed through to Zepp on the south, and Rutger street on the north, but at that time had no industrial switches or sidings to make

it operative. The above, in a general way, was the condition of the property as I found it toward the end of February.

I omitted what was toward the east along the river: Connecting the First street tracks and yards with the River yard, there was a viaduct built shortly before I came, beginning at a point about half way between First and Second streets on Pestalozzi street, crossing over the tracks of the Iron Mountain and certain tracks of the St. Louis Transfer Railway, running in a general northeastern direction to about Barton street, and connecting with the River Yard, and with the St. Louis Transfer Railway. The River Yards were not then completed to the extent that they are today, because we are constantly filling to extend the property to the full limit allowed us on the river bank. The River Yard is owned in part by the Manufacturers Railway, and in part is leased from the City of St. Louis. The tracks belong to the Manufacturers Railway.

When I took my position with the railway, I had a talk with Mr. August A. Busch, and received instructions from him as to the lines which I was to follow in the management and operation of the road. He is Vice-President and Chairman of the Board; at that time, he was Vice-President. Mr. Busch stated that it was
203 the wish of the owners of the Manufacturers Railway to develop the property along the lines of a switching and terminal company in the City of St. Louis, and to make it in every respect a first class terminal property, increasing its facilities so as to accommodate all of the business we could secure in South St. Louis, to afford additional terminals and facilities for any lines that might want to use them on a fair basis, to extend the present system of railway into the State of Illinois, to use car floats or other suitable trans-river transportation, and to build a certain amount of railway in Illinois, forming an outside belt around East St. Louis. He also stated that he was interested in the building of a southwestern road, if such organization could be formed; that he would be interested in establishing a trunk line from St. Louis into the southwest. The instructions were to make the property first class in every respect, increase its capacity, and try to increase its business, and he told me to go ahead and do it.

"Examiner Hillyer: Those were your instructions, as to your duties in assuming charge of that railroad?

Mr. Moore: Those were my instructions."

That must have been in January, 1909. I told Mr. Busch that we had ample facilities to accommodate quite a little more business than we were at that time enjoying. I informed him that the facilities would not be adequate to handle trunk line business without extending them considerably, and without expending considerable money, and he assured me that that was his intention, to furnish the money and have the work done.

204 I made a number of trips of inspection over the existing property and surveys for extension. The first thing I decided as necessary to carry out the plans was to create some facilities for the increase of the tonnage of the railway along the Second street line, which was inoperative on account of then having no

sidings, public tracks or private industrial tracks, and I immediately began to arrange for such tracks. The blue print you show me represents in a condensed way the Manufacturers Railway Company, as constructed, and as projected by preliminary and finished surveys. The St. Louis lines have a copy of that blue print.

(Exhibit 25 is the blue print.)

Referring to the blue print, Exhibit 25, I will indicate the tracks that run to the plant of the Anheuser-Busch Brewing Association. They begin at First street, at the connection with the St. Louis, Iron Mountain & Southern and extend in a general westerly direction along the line of Pestalozzi street or near it, to what we term our "Ninth street yard." This blue print does not show all the tracks we have. We could not do so upon such a small blue print, but the Ninth street yards are practically in the property of the Anheuser-Busch Brewing Association, with a straight track along Ninth street, which is for public use, and has been for a number of years. The track up Dorcas street to Thirteenth street also terminates at one of the departments of the brewery, and the public delivery tracks that I found when I went there were to the north of this
205 line, but rarely ever could be of any service to the brewery. The delivery tracks last referred to in the Thirteenth street yards will hold about 35 cars; in the Eleventh street yard about 30; in the Ninth street yard and on the switch along Ninth street, probably 25 or 30 cars. The Post Office yard on Broadway off Pestalozzi street will hold about 16 cars.

The Post Office yard is right opposite the South Side Bank Building, near the corner of Pestalozzi street and Broadway, on the east line of Broadway, and is represented on the plat, Exhibit 25, by the lines, showing tracks, and terminating at Broadway, and between what is called the Pestalozzi and Dorcas street lines. It is imperfectly represented on the blue print, because condensed.

That explains pretty nearly as accurately as I can all of the Manufacturers Railway and leased lines that are of service or necessary to the service of the Anheuser-Busch Brewery.

The Second street line runs from about Zepp street, on the south up to Rutger street and has been extended from Rutger street to La Salle. Under the city franchise we can extend it to Poplar street, where there would be a connection with the Missouri Pacific. We have built only to La Salle street, and have put in switches there to serve the N. K. Fairbanks Company, who have two switches off our Second street line, and to serve the Bradbury Marble Works. These switches are located between Second and Third street, La Salle street on the north and Rutger street on the south. At Rutger and Second streets there was a small triangular piece of
206 ground which we graded and built our tracks into it and leased it later to the Independent Coal & Coke Company, who are doing a coal and ice business there at the present time.

South of Rutger street, we have permission to put a track from Second street west which has not as yet been constructed, but under the same authority we constructed a "Y" leading from near Rutger street on Second to Miller street into a piece of property which we

secured from the Board of Education, and built a switch extending through to First street where we have another connection with the Iron Mountain. One leg of this "Y" serves the Western Sash Weight Company and off of the other leg of the "Y" a switch is thrown into a new boiler company, that was recently established, the John Nooter Boiler Works, which is now building.

That switch is already constructed. South of the "Y" we have not as yet put in any team tracks or switches between Miller and Lynch street, but we have a crossover from the Dorcas street line to Second street and have established public tracks in there.

Going south on Second street east of Lyon Park before we get to the end of the constructed line, we have a switch of two or three tracks into the Ganahl Lumber Company, which is located on our line and this work was finished since I have been with the road. At the end of the track there is another switch designed to be used by the public.

207 At Utah and Second street, just north of the Ganahl yard there are three switch tracks designed for use by the public; two were built before I came there and one I have constructed since.

The viaduct is shown on the blue print (Exhibit 25) as leaving the Pestalozzi street line, just east of Second street crossing over the Iron Mountain and running up to about Barton street on the north. This structure is a very substantial one. The viaduct shows on the blue print as a cross line, going from the Pestalozzi street line over the Iron Mountain to a connection with what is locally known as the Wiggins Ferry, i. e., St. Louis Transfer Railway Company, where we have immediate connection with it and also with the different yards lying east of the viaduct between it and the river. Those river yards belong to the Manufacturers Railway. We have eleven tracks there now. I am working on the eleventh. Track extension is still progressing in that yard. We are filling constantly and will use up our space allowance eventually.

The river yards are switch yards and side tracks. The incline has been laid off right east of Arsenal street. It is not however completed, but it is where we determined to place it.

Immediately south of the tracks known as the River Yard, south of Utah street, there is another yard area of river and wharf property, controlled by the Manufacturers Railway, that may be turned into yards as needed. The orange-colored line that you see on Exhibit 25, running from near Utah street south to the line marked "City Limits," represents what we call our city limits extension.

208 We have franchises covering it, and have purchased about $352,000 worth of right of way along that line. That begins at Utah street and is surveyed through private property, and city streets on which we have the right in a generally southwestern direction. The largest tract of private property which we have acquired on that part of the line, is just west of Virginia avenue, along Osceola street, about sixteen acres in one piece, all south of Utah street. This, in the middle (indicating) is a depression, and furnishes a fine mouth to the projected tunnel, as shown

on the blue print (Exhibit 25), by a green line. That tunnel is two miles long, but, of course, is not a fixed survey for a tunnel.

We have constructed part of the line shown in orange. We are working at present entering De Kalb street, near Cherokee street. We would have been quite a little further along with the construction had it not been for a misunderstanding between us and the street commissioner in regard to our ordinance. They tried to have us put up an indemnity bond for excavations instead of grades. That has been settled within the last week, and we are going ahead with the work now. We are on it today, I think.

Just east of the United States Arsenal, between that and the Iron Mountain tracks, the Manufacturers Railway secured a right of way for three tracks, extending from Arsenal on the north to Utah street on the south. Those track- have been put in and are being used principally for storage purposes, and affording additional facilities for switching, and we have connection with the Iron Moun-
209 tain down near the end of those tracks. The right to build those tracks had to be obtained through an act of Congress, and remuneration to the government was arranged. The railway had to rebuild a very expensive stone wall, and build an officers' quarters and residence of quite little pretensions, and to construct a track on the inside of the Arsenal, giving them a switch, which they did not previously have. I think, altogether, it must have cost about $60,000, and was completed in 1906 or 1907. The officers' room or house was a very nice twelve or fourteen room brick building. As to the other delivery team tracks on our road, we have in all cases where we constructed industrial tracks, tried to retain the right to use them for public business, when we could do so without unreasonable interference with the business of the track owners. We succeeded in many cases in doing so. We can serve the public at La Salle and Second street. We have another switch along the east line of Second street to serve the Laclede Gas Light Company, on which track we can also serve the public. We retained the right to use the track going into what is known as the Independent Coal Company's yard, on Merchant street, for public use. The Park avenue track is designed for the use of the general public; also the Dorcas and Second street track is designed for the use of the public. We retained the right to use all that trackage for any public business.

Under the lease of December 31, 1908, the Railway acquired all of the railroad property owned by the Anheuser-Busch Asso-
210 ciation, and the right to use those tracks for the purposes of the Railway Company. All of the tracks of which I speak have been used for the public. The tracks at Thirteenth street as constructed were and are more extensive than were required for the brewery's use. The Thirteenth street yard has been used for public deliveries; also the Eleventh street yard which is more extensive than the brewery's needs. The yards between Ninth and Eleventh street north of the main track were put in almost exclusively for public use. The line along Second street, both north and south of the track running to the brewery, and the switches,

or spurs, connecting with the Second street line, are not in any way necessary for the purposes of the brewery. The city limits line, when completed, will not be at all essential to the interests of the brewery, nor will the car ferry, or the Belt Line around East St. Louis be essential in any way to the purposes of the Anheuser-Busch Brewing Association. The construction of the viaduct, from the point of connection with the Pestalozzi street line over to the River Yard was not necessary for the purposes of the brewery, nor was the River Yard itself.

The blue print (Exhibit 26) shows the different proposed tracks on Second and Dorcas streets, and show- the city block numbers as established by the City of St. Louis. It shows the line from Poplar street on the north, southwest to Potomac street, and the Dorcas street line, from First street up to Thirteenth street, with the cross-over. It is introduced to show the block numbers, i. e., to identify
211 the lines of the road with the ordinances which have been introduced in evidence, so as to locate the route of the lines to correspond with the route prescribed by the ordinances. It was made in 1905 prior to a good deal of construction which took place since then. The main purpose of its introduction is to show the block numbers.

The first map (Exhibit 25) was made since January 1, 1910, for the purpose of giving information to the St. Louis lines, at their request. The next map (Exhibit 27) is a large scale map of the proposed city limits extension, from Utah street and Second, on the north, to the city limits, on the southwest. The block numbers are correctly shown on this map, and the main purpose of its introduction is to show them. This line is all a proposed line. It has been surveyed; the details are in my possession, the franchise granted, and $352,000 worth of right of way purchased, but the line is not constructed as yet.

The total mileage of the Manufacturers Railway, leased and owned, is approximately twenty-five miles. The actual mileage used for serving the Anheuser-Busch Brewing Association is between nine and ten miles. Including the real estate purchased for right of way, the total investment for constructed property today (not including the proposed and unconstructed lines) is approximately $800,000, which does not include any part of the price of the line leased from Anheuser-Busch Brewing Association.

Examiner Hillyer: "Taking that $800,000 as 100 per cent., what percentage of it is invested in property for the purpose of serving the Anheuser-Busch Brewing Association?"

Mr. Moore: "Not to exceed 10 per cent."

212 Our twenty-five miles of track is divided into main track, side tracks, switches and store-yards; about two and one-quarter miles is main track, of which about two miles is on Second street, and about a quarter of a mile on Dorcas and Pestalozzi streets. The balance is side tracks, switches and yard track. The reason for our not constructing the Second street track farther north was an injunction proceeding to prevent the construction of the line on Second street. The bill was dismissed in the trial court, and the

complainant property owners appealed to the Supreme Court; the case was argued and submitted, and is now under advisement. The Second street line, involved in that proceeding, is covered by the same ordinance, which requires us to cross the river into East St. Louis.

That suit is one reason we have not constructed farther north towards Poplar street. Another reason is the uncertainty as to the Free Bridge, where it will go and how it will affect the Manufacturers Railway. I don't want to construct a surface track and expensive crossings at Convent street, and then have to take them up if the Free Bridge goes there.

Our line goes south below Utah street, I think about three blocks, maybe two. The green line, on Exhibit 25, represents the proposed tunnel. The City ordinances have been changed somewhat and probably will not be acceptable with a surface line through that entire route. We would much prefer a tunnel if we could make it possible to build one. That is why we are planning the tunnel to evade the grades we have to conform to in the city. The green line is not authorized by the franchise; the orange line is.

213 Our object ultimately is to connect up the scheme down to the city limits. From the city limits to the end of the orange line, the city has not been developed to any considerable extent and that was one purpose of the Manufacturers Railway to go through there and develop the property that looks as if it should be manufacturing and industrial property. There are some industries located there now. South of the present line, there is a large brewery (Lemp's brewery), chemical works, a big pottery works and three or four other industries of some magnitude, but not like what it ought to be. We are grading today on the southwest extension line. That work is being done where the city stopped me on an excavation ordinance, but it has rescinded that action and allowed me to go ahead. It is upon Cherokee and De Kalb streets, I think; we had some heavy grading there. It was not possible for us to build there until we got our permit from the city, and we only got it last Friday; it was held up for some time by the negotiations. The property which we bought along that line has been paid for by the Manufacturers Railway Company. Such part of the southwest line as is used for railroad stands in the name of the Railway Company. I believe Mr. August A. Busch purchased the property. We have had a number of requests from different persons for private tracks not yet built to industries, and we are arranging to put tracks into additional industries, where there are none at present.

There are three such cases on Second street, besides a public track, which I am trying to put in there. This year we have taken

214 over a track of the St. Louis, Iron Mountain & Southern, along north of Arsenal street, and formerly operated by them, on which the St. Louis Basket & Box Company and the St. Louis Cooperage Company are located, industries that furnish between them about 2,500 cars of freight a year.

Exhibit No. 28, is a contract dated March 26, 1910, between the

St. Louis, Iron Mountain & Southern Railway Company and the Manufacturers Railway Company.

This agreement provides for the purchase of a spur track extending from a connection with a running track of the Iron Mountain Company at the south line of Arsenal street and extending in a northwesterly direction a distance of approximately 906 feet. The consideration was $794.10, being the agreed present value of the materials now in said spur track. The ownership of said spur track and the materials to become vested in the Manufacturers Railway Co. It is also provided as follows:

"The Mountain Company hereby reserves the right to jointly use said spur track for delivering shipments which originate on its lines of railway or those of the Missouri Pacific Railway Company, and which are destined to industries adjacent to said spur track, and also for receiving shipments originating upon said spur track and which are destined to points reached exclusively by the lines of railway of the Mountain Company and the Missouri Pacific Railway Company.

The Mountain Company shall not have the right to use said spur track for any purposes except as herein provided.

No charge of any kind shall be made by the Manufacturers Company against the Mountain Company for the joint use herein provided for."

215 It is further provided that the Manufacturers Company shall have the joint use of that part of said running track extending six hundred and forty (640) feet southwesterly from the connection of said spur track, but shall not have the right to use said running track for any purposes other than to conveniently reach said spur track.

With the tracks which we have constructed and extended along Second street, and from the volume of business that I know is handled on Second street, and from such part of it as we have already handled, I estimate that we will have between six and seven thousand cars a year off of our Second street line, which figures would not include any of the Anheuser-Busch Brewing Association's business.

We have had negotiations for extensions on the east side of the river. About a year ago we were invited to consult with a number of other lines, looking toward a merger of certain properties now operated on the east side with our own property, and the negotiations proceeded to the extent of definite propositions being submitted and discussed. That particular plan has been abandoned since.

We also ran a preliminary survey on the east side for the independent construction of tracks. I have also had up the matter of leasing or obtaining trackage rights over certain properties owned by the Louisville & Nashville, the Illinois Central and the Southern, all of which have been ended without result except those with the Illinois Central.

We still have in mind a proposition for consolidation with one other line on the east side, and the building of a belt line
216 around East St. Louis, which would include the inclines and car ferry provided for by the ordinances. The east side sur-

vey was made, I think, in August, 1909. Our plans for completion on the river approaches and car ferry were interferred with by the same causes which hindered the going north on Second street; it is all in the same franchise. If we can establish good and sufficient connections with the Free Bridge, so as to operate over it, that would make it unnecessary to build a trans-Mississippi float service. The location of the Free Bridge has been fixed and certain work done on it. The west end is supposed to be between Chouteau avenue and the next street north, and the bridge will cross the river a little north of that line. The piers are being built almost east of Chouteau avenue.

The Free Bridge is the local name for a municipal bridge, which has been authorized by a bond issue of the City of St. Louis of, I think, three and a half million dollars, already voted for the construction of a bridge to be operated by railways, wagons and foot passengers, under terms and conditions to be named by the City Council.

The local name for it is "Free Bridge," because by the use of it they have hoped to get a less river charge on their goods. The bridge itself they are working on now. They are also condemning land for the approaches.

Exhibit No. 29 is a letter from J. E. Taussig, Chairman of the Special Committee of the General Managers Association in-
217 quiring into the question of car interchange between the defendant lines and industrial roads and the allowances made therefor.

The cause of the Free Bridge movement was this: It was considered necessary by the people of St. Louis. The proposition was brought up by popular clamor, the people thinking it would give them an independent terminal that could not be controlled by the present existing terminal. By popular vote at an election, the bonds were voted and the purpose, as set forth in the newspaper accounts and by the different civic organizations, is to afford St. Louis a means of reaching the east over facilities that St. Louis itself could control and which could be used on equal terms by all so desiring.

Since I became connected with the Manufacturers Railway, we have done considerable work towards soliciting outside business from plants located on our line. We have solicited carload business from all industries located on and adjacent to our line, and from industries that could be reached by our line better than any other line. We have also canvassed the territory to ascertain what less than carload business could be secured and what facilities would be necessary to assemble this business and handle it so that it could be distributed to the different lines. We have also solicited business from industries located in the vicinity of our public delivery tracks, and which could be reached by us better than any other railway. I mean such industries located, from the river on the east to Thirteenth street on the west and from Convent street on the north, to the Western
218 Cable Railway, on the south, i. e., south of Zepp street. That was a solicitation for immediate business. We have also in-

vestigated some business that we thought would naturally be ours when we extended the line farther south.

There are industries located in the vicinity of our yards at Thirteenth, Ninth and Eleventh streets which are available for our service, i. e., the Independent Breweries, Obert Brewery, the Cramer Dry Plate Company, and the Warren Coal & Coke Co. They have used those tracks regularly for some time. The two breweries thus mentioned are not in any way connected with the Anheuser-Busch Brewing Company, but are independent concerns and competitors in business. They do a very good business.

As the result of our efforts to procure business from plants and industries not located directly on our line, that class of our business has increased very materially since we commenced such efforts. The length of our line in the territory I have referred — is about two and one-half miles along Second street, and the territory over which I solicited business was a little over a mile wide, east and west.

Exhibit No. 30, is a photograph of the part of the river yards lying east of the viaduct and north of where it crosses the Iron Mountain.

Exhibit No. 31, also shows the river yards, another view, east of the American Car & Foundry Company; the tracks shown in this exhibit are tracks of the Manufacturers Railway.

Exhibit No. 32, is a photograph of a section of the overhead viaduct structure showing the crossing of the St. Louis Trans-
219 fer Railway. All of the tracks on the east side of the elevated structure belong to the Manufacturers Railway, and some of those on the west. The tracks on the west, showing the cars upon them, belong to the Manufacturers Railway.

Exhibit No. 33, is a photograph showing the western end of the viaduct, over what is known as the "Horn Yard" of the Manufacturers Railway. All of the tracks shown are the Manufacturers Railway Company's.

Exhibits Nos. 34 and 35 are other views of the viaduct.

Exhibit No. 36, is a section of the steel work of the viaduct, showing its substantial construction.

Exhibit No. 37, is a photograph, showing the two tracks on Second street, east of Rutger and La Salle, serving the N. K. Fairbanks Company, the Bradbury Marble Company, and the Laclede Gas Light Company.

Exhibit No. 38, is a photograph, showing part of the Post Office yard. The industries shown are the St. Louis Dressed Beef Company, and the Morris Company, both served, also, by another spur not shown, but just south of Morris Company's plant.

This Post Office yard is not used at all for Anheuser-Busch business, but is used exclusively for the public. The track just beyond the Morris plant was used at one time exclusively by Morris, but it can now be used as a public track.

I have had negotiations with other railroad companies concerning our city limits line. A number of smaller lines, having
220 branches south and southwest of St. Louis have negotiated with us for the right to use our tracks when constructed from

the city limits into St. Louis. We have also been asked to participate in the construction of a southwestern line from St. Louis to Fort Smith, Arkansas. These negotiations are still pending. They contemplate the use of our present line as part of that line. I have also been negotiating for property for a freight station We have authorized the purchase of approximately one and one-quarter million dollars worth of real estate to create terminal facilities including a large commodious freight house. We also have plans for passenger facilities or stations on the southwestern extension. We have actually purchased a tract of sixteen acres approximately to establish passenger facilities. We have a number of pieces of property, purchased for subsidiary assembling freight stations.

The total acreage in our immediate plans for freight and terminal facilities would be about twenty acres and the sixteen acres mentioned for passenger facilities.

Since I have been with the Manufacturers Railway we have expended for property, building and construction, I think, about a half million dollars, that is since February 22, 1909; altogether about $800,000 is invested in the property and construction of the Manufacturers Railway. We hold under lease the River Yard, leased from the City of St. Louis at a rental of $4,000 per annum, and the lease on the railroad property owned by Anheuser-Busch
221 Brewing Association at a rental of $24,000 a year. Since I have been with the Manufacturers Railway, there has been no additional trackage built for the service of Anheuser-Busch Brewery. We have done a little yard construction to enable us to load and unload the business more cheaply, the cost of which is included in the figures I gave. A few thousand dollars would cover it.

All the balance of the money spent by us for property and construction was for the purpose of serving others than the Anheuser-Busch Brewing Association The viaduct cost about $287,000 and it was not necessary for the service of the brewery because at First street the Manufacturers Railway had a connection with the St. Louis, Iron Mountain & Southern. Prior to the building of the viaduct not only the Anheuser-Busch business was handled that way but also other business originating on the Manufacturers line.

If all the business has been handled in the past without the viaduct, it surely could be handled now in the same way, and while the brewery shares in common with all our industries the advantages of in increased facilities and increased connections, they do not receive any special benefit from the construction of viaduct other than what is shared by patrons of the Manufacturers Railway. The viaduct gives a connection with the St. Louis Transfer Railway in addition to our other connections with the Iron Mountain. The Transfer Railway is locally known as the Wiggins Ferry and operated as a part of the Terminal Railroad Association.

222 "Examiner Hillyer: There is no other outlet besides these two, the Iron Mountain and Wiggins Ferry?

Mr. Moore: No other track connections. Through the St. Louis Transfer Railway we reach all lines, both east and west."

We could make delivery to the Iron Mountain and Missouri Pacific

by way of the Wiggins if we wished to as well as direct. When our cars are delivered through the Iron Mountain they have to go through the Terminal to reach the east and west lines other than the Missouri Pacific.

Exhibit 39, is a contract dated January 16th, 1909, between St. Louis Transfer Railway and Manufacturers Railway, and covers the joint use of certain railway tracks by the parties to the contract. Paragraph three of said contract is as follows:

"That the Transfer Company grants the Manufacturers Company the right to use jointly with itself, its east track extending northwardly from cross over (*b*) located at Victor street for the purpose of making deliveries in the Transfer Company's yard."

The contract also provided for a certain interchange of trackage facilities and joint use of certain tracks by the parties to it.

"Examiner Hillyer: Is St. Louis Transfer Railway and Wiggins Ferry the same concern?

Mr. Moore: The St. Louis Transfer Railway is the track along the west bank of the Mississippi, formerly known as Wiggins Ferry Company, but in separating the river property from the rail property they named that track the St. Louis Transfer Railway. It formerly was a part of the Wiggins Ferry Company and is locally known as Wiggins Ferry now."

At the present time we have four operating locomotives,
223 three of which are 80 tons and one 60 tons. The first of the year we have an additional locomotive of 125 tons, which I sold because I found it too heavy and of a pattern which I did not believe is much in use now. It cost $19,600. My purpose in selling it was to put the money into a more serviceable engine and we now have another engine under contract, 80 tons, which will be delivered at the convenience of the builder. That will again give us five locomotives. That equipment, excluding the one building, cost about $45,000. The new one will cost $12,600. I have prepared a table showing monthly business done by the Manufacturers Railway Company in two different forms. It covers the period from May 1st, 1909, including April 1910, twelve months, and shows separately, the amount of business forwarded and the amount of business received during each of those months in tons, together with the total and also shows the percentage and also shows separately the business carried for the Anheuser-Busch Brewing Association and that carried for other industries, with the percentage as to each class and the totals showing the number of cars and tonnage.

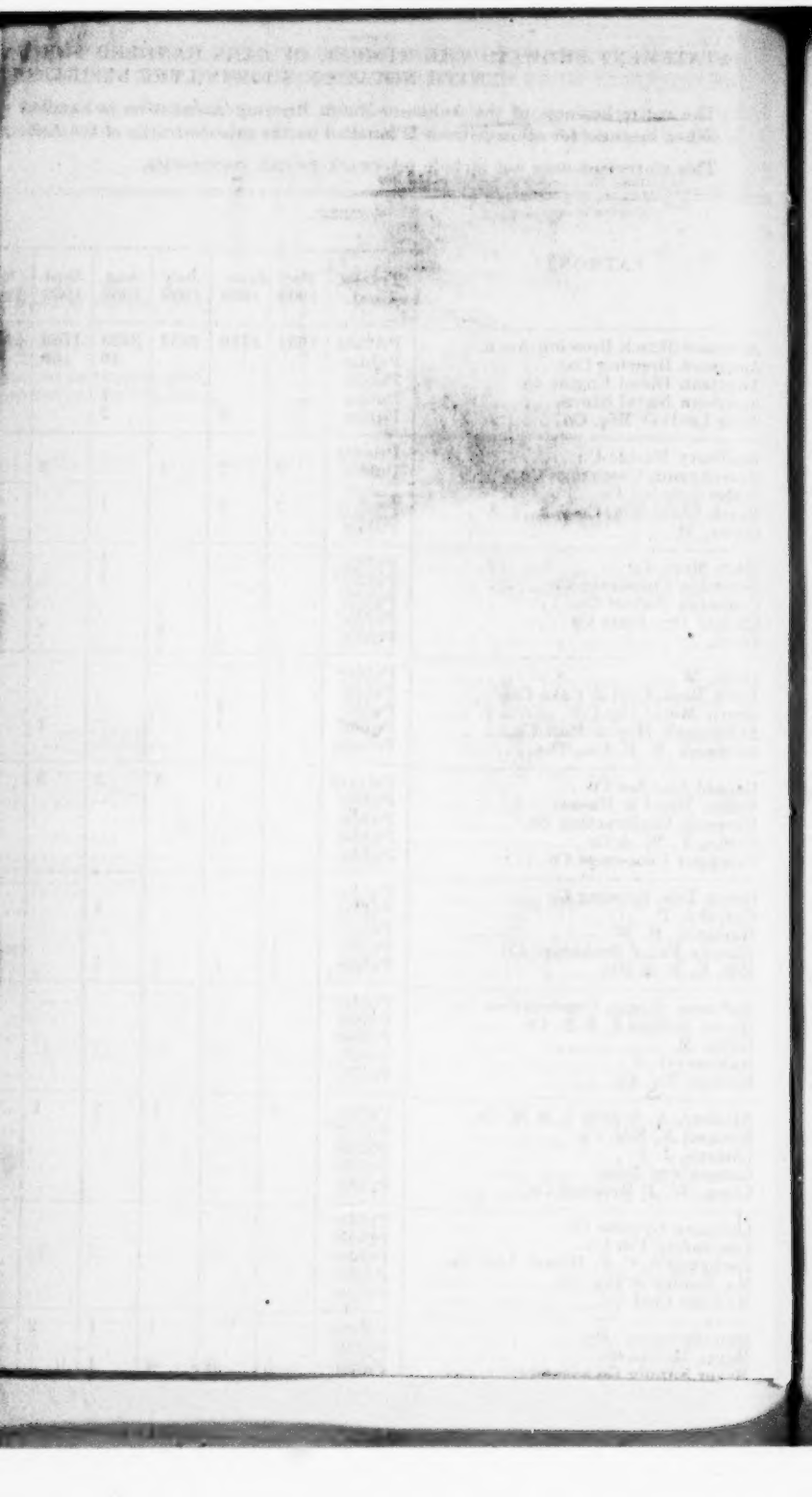
Exhibit No. 40, is one of the tables referred to and is as follows:

(Here follows table marked page 224.)

EXHIBIT 40

STATEMENT, BY MONTHS, OF TONNAGE FORWARDED AND RECEIVED VIA MANUFACTURER'S RAILWAY CO., FROM MAY 1ST, 1909, TO MAY 1ST, 1910

Months	Forwarded						Received						Totals		
	A.B.B. Ass'n Tons	% A.B.B.A.	Miscl. Tons	% Miscl.	Total Tons	Total No. Loads out	A.B.B. Ass'n Tons	% A.B.B.A.	Miscl Tons	% Miscl.	Total Tons	Total No. Loads in	% Miscl. Out & in	Loads Out & in	Tons Out & in
May 1909	24928	.951	1273	.049	26201	1718	17368	.745	5932	.255	23300	1435	.146	3153	49501
June "	31670	.957	1425	.043	33095	2185	19006	.775	5526	.225	24532	1609	.121	3794	57627
July "	34227	.969	1110	.031	35337	2311	19606	.759	6228	.241	25834	1795	.120	4106	61171
Aug. "	38519	.958	1669	.042	40188	2522	22284	.775	6454	.225	28738	1945	.118	4467	68926
Sept. "	27384	.921	2345	.079	29729	1922	24012	.746	8167	.254	32179	1911	.170	3833	61908
Oct. "	23120	.921	1977	.079	25097	1649	24958	.700	10668	.300	35626	1918	.208	3567	60723
Nov. "	21054	.897	2417	.103	23471	1550	22984	.713	9240	.287	32224	1770	.209	3320	55695
Dec. "	19716	.885	2561	.115	22277	1454	24170	.703	10213	.297	34383	1666	.225	3120	56660
Jany. 1910	16467	.866	2540	.134	19007	1229	24462	.680	11503	.320	35965	1687	.255	2916	54972
Feby. 1910	18287	.869	2745	.131	21032	1321	24534	.646	13453	.354	37987	1718	.274	3039	59019
Mar. 1910	31178	.913	2969	.087	34147	2238	27001	.649	14586	.351	41587	2016	.232	4254	75734
Apr. 1910	23536	.887	2999	.113	26535	1740	15358	.669	7604	.331	22962	1661	.215	3401	49497
Totals	310086		26030		336116	21839	265743		109574		375317	21131	as .191	42970	711433
Monthly Averages	25840	-	2169		28009	1819	22145		9131		31276	1761		3581	59286



225 The other statement or table which I have prepared shows the amount of business by carloads of each of our separate patrons during the same period. It is Exhibit No. 41.

Later, on pages 316-7 of the record, Mr. Jeffery asked Mr. Moore to file a revised statement showing the team track loading as distinguished from the spur track loading. This revised statement contains all that was included in Exhibit 41 and in addition shows whether deliveries were made on public or private tracks. It is as follows:

(Here follows statement marked page 226.)

227 About nine miles out of the twenty-five miles of the Manufacturers Railway now constructed are necessary for the use of Anheuser-Busch Brewing Association. About ten per cent. of the cost of the entire road represents the cost of the part used for the service of Anheuser-Busch Brewery.

"Examiner Hillyer: Your statement by months of the forwarded and received tonnage of the Manufacturers' Railway shows the percentage of the miscellaneous forwarded freight to be .113, while for traffic received the percentage is considerably larger than that, .331. Can you enlighten the record as to the difference, why it is?

Mr. Moore: Many of our industries are receivers of freight that is distributed by wagon in St. Louis, coal and lumber which represents two of our heaviest receiving commodities, that is the reason for the disparity between the percentages."

So far as my comparative statements go, the business which we have conducted for Anheuser-Busch Brewing Association has not increased since we took over the operation of the road as compared with previous times.

I know something about the business done by the Terminal Railroad Association in the City of St. Louis. Basing my judgment on public reports, the tonnage handled by the Manufacturers Railway Company is about one-fourteenth as much as the tonnage handled by the Terminal Railway Association. As compared with the business handled by the several lines composing the Terminal Railway Association, if all lines are put on a level average of about ten thousand cars a month, our business would be something more than one-

228 third as heavy as any line, but if you take the weak lines, we would probably do as much business as some of the smaller lines and I think perhaps exceeding fifty per cent. as much business as such a line as the Big Four, that is through what information I can get. The in and out-bound business of Anheuser-Busch Brewing Association is generally computed to be about one-thirtieth of the total business originated in the City of St. Louis.

I have been told the Iron Mountain handles about ten thousand cars a month. If all the tonnage originating on the Manufacturers Railway were turned over to the Big Four Railroad, I think the Manufacturers' Railway tonnage would increase the business of the Big Four fifty per cent.

The Manufacturers Railway Company makes annual reports to the Interstate Commerce Commission and has since July 1, 1908. It also makes monthly reports to the Commission, and submits reports of accidents. It also makes reports to the Railroad & Warehouse Commissioners of the State of Missouri, as required by Missouri law. It also files all its tariffs with the Interstate Commerce Commission, also all concurrences and powers of attorney relating to such tariffs. The Manufacturers Railway Company is named as a participating carrier in certain tariffs. The tariffs of the Manufacturers Railway are filed in its office for public inspection and a notice to that effect is posted in the office. It keeps its accounts according to the Uniform System of Accounts prescribed by the

Interstate Commerce Commission. It complies with the Safety Appliance Act and the Hours of Service Act. It reports to the
229 Interstate Commerce Commission as a Switching and Terminal company, Class one. The Manufacturers Railway Company has made application to become a bonded carrier. This application has been accepted by the government and it has executed bonds as a bonded common carrier in order that it may handle bonded import and export freight.

Item three of Manufacturers Railway tariff I. C. C. Number 7 issued November 3, 1909, effective December 7th, 1909, is as follows:

"When cars are placed at one point and ordered moved to another point in the same industry at St. Louis, Missouri, a charge of $1 per car will be made."

We make that charge for switching performed by the Manufacturers Railway Company including that service to the Anheuser-Busch Brewing Association. We make that charge for movement of cars between any two plants within its works.

We participate in the settlement of loss and damage claims for goods moved over our line and that — all other carriers under the rules of the Claim Association, on the basis of a ten mile haul. That is the same basis on which the Terminal Railroad Company shares in loss and damage claims.

There is but one line of railroad which competes with the Manufacturers Railway Company. It is the St. Louis, Iron Mountain and Southern. I do not consider that the St. Louis Transfer Railway Company competes with us. It does not reach any industry that is located directely on our line or which is served by us.

Our tariff, I. C. C. Number 7, provides a fixed or per car
230 allowance and is made effective by other tariffs published by the connecting lines, in taking this fixed allowance up in their tariffs as an absorption. We are allowed, when the matter is handled as an inter-line matter from $3 to $5.50 per car by that tariff. The minimum charge of $2 per car is fixed by city ordinance. The $5.50 amount applies to out bound business and from $3 to $4.50 to in bound business. The only difference in my opinion between that and the division of rates is an accounting difference. We were parties to a tariff published by the authorized agent of a number of participating lines in the transportation of coal from coal fields in Illinois to St. Louis and to industries in St. Louis located on the Manufacturers Railway and by virtue of that tariff division sheets were arranged allowing the Manufacturers Railway Company ten cents a ton for the handling of coal going to its industries and dealers on a fifty-two cent rate, the same as other parts of St. Louis. The difference in the practical operation of the tariffs in effect before March 1st, 1910, and those in effect since that date is that shippers and patrons of the Manufacturers Railway Company will since that date be compelled to pay the charge of the Manufacturers Railway Company for its services in addition to the St. Louis rate, while formerly the tariff arrangements and agreements between the Manufacturers Railway and the carrying lines allowed the greater

part of the business to and from the patrons of the Manufacturers Railway Company to be moved on the St. Louis rate. That applied to all shippers and all industries on our line. There were
231 some excepted commodities on which the railroad did not absorb any proportion of the charges of the Manufacturers Railway Company.

"Examiner Hillyer: The fact that a shipper is located on your line compels him to pay this extra charge, that he would not have to pay if he were located somewhere else in the city.

Mr. Moore: That is the idea."

The absorption of the different lines provided for the absorption of switching charges within the switching limits, so far as all railroads other than the Manufacturers Railway are concerned. I am not considering the other roads that were cut off with the Manufacturers Railway. Each of those defendant carriers absorbs the charges for deliveries to industries on the lines of each of the other defendant carriers. They did that prior to March 1st, 1910, and still do so.

The Ganahl Lumber Company is located on the Manufacturers Railroad. The St. Louis Lumber Company at Barton street is located on the Iron Mountain in the vicinity of the Ganahl Lumber Company. It is not served by any other road except the Iron Mountain. The Ganahl Lumber Company is not served by the tracks of any other railroad except the Manufacturers Railway. If two cars of lumber were to start at the same day from the same point over the same line, the one sent to the St. Louis Lumber Company and the other to the Ganahl Lumber Company, the tariffs now applicable would provide that the lumber be delivered to the St. Louis Lumber Company on the St. Louis rate and the lumber to the Ganahl Lumber Company on the St. Louis rate plus $2 a
232 car. The effect of that would be that it would cost the Ganahl Lumber Company $2 a car more than it would cost the St. Louis Lumber Company. The Schroeter Coal Company has a yard on the Manufacturers Railway, also a yard at Miller street on the Iron Mountain. The same condition would apply in charges per car of coal as I have testified with reference to lumber. That would be true for delivery of that car of coal at any other industry or yard in the City of St. Louis within the switching limits. All deliveries within the switching limits of the city of St. Louis on coal are provided for by an allowance per ton, except on the Manufacturers Railway Company in the tariffs now effective.

There are eighty-eight patrons named on Exhibit 41.

"Mr. Cassoday: Now, won't you commence at the top and take each of these industries, and tell us where located and by what railroad they are served and in what way.

Mr. Moore: The Anheuser-Busch Brewing Association located between First street on the east extending to Thirteenth street on the west from Arsenal street on the south, Dorcas and Lynch streets on the north, has no other railroad facilities than those furnished by the Manufacturers Railway Company.

The American Brewing Association located north of Dorcas street

uses the Post Office yard on the Manufacturers Railway, located within a half block of their property. The nearest line would be the Iron Mountain. I believe the St. Louis Transfer Railway possibly would be the nearest public team track and that is located just west of our viaduct. There is about four per cent. grade between the plant of the American Brewing Company and the team track of the Transfer Railway. The haul would be about six
233 blocks to the nearest team track I know of outside of the Manufacturers Railway. The American Brewing Company is in no way connected with the Anheuser-Busch Brewing Association.

The American Diesel Engine Company are located in the South Side Bank Building. Their business is very light, only one car. Theirs was a team track delivery.

The American Naval Stores is United States property in which we have a private track and another track goes in there.

The Atlas Leather Company uses a team track.

The Bradbury Marble Company have their own switch. It is located at Second street north of Rutger street. It has a private track off the Manufacturers Railway and own their own switching facilities.

The Brueckman Cooperage Company I cannot definitely locate. They must use a public team track.

Also Buder Lumber Company.

The Busch Glass Manufacturing Company have their own switches off the Manufacturers Railway Company.

The Cohen Metal Company, one car, loading on our track, scrap iron.

The Clark Mercantile Company have no private track off of our property, but must use some of our public team tracks.

The Columbia Cooperage Company, located on Second street, use the Dorcas street team tracks.

The Columbia Pretzel Company use one or more of our team tracks.

The Cramer Dry Plate Company do most of their unloading up on Thirteenth street on the team track.

H. Davis I do not know.

Neither do I know the next party. He simply handled one car, W. Diehl.

Donk Brothers Coal & Coke Company have no private switch on our tracks. They are located on the St. Louis Transfer Railway tracks east of First street on Dorcas.

Dorris Motor Car Company and Ehlerman Hop & Malt
234 Company have no team track on our road, probably shipped that out for somebody else.

N. K. Fairbanks are located at Convent and Second streets, served by the Manufacturers Railway and Iron Mountain tracks, having private tracks, I understand, off of each road. We began getting some of their business last December.

The Ganahl Lumber Company located on Second street,—on Broadway, south of Utah, and extending through to Second street.

They have team tracks off the Manufacturers Railway and are served by no other company.

Geller, Ward and Hasner only handled one car, I presume from a team track.

Gilsonite Construction Company, general public in the vicinity of Second and Dorcas.

F. W. Goeke & Company use team tracks of the Manufacturers Railway.

Groepper Cooperage Company received one car on a team track of the Manufacturers Railway.

The Green Tree Brewing Company uses team tracks of the Manufacturers Railway Company, generally those tracks lying west of Broadway.

P. Gutjohn, one car, must have been at a team track.

R. W. Harbison, the same.

Harvey Faust Brokerage Company, the same.

E. B. Hill & Bro. use Dorcas street team tracks and are about five or six blocks I think from any recognized public tracks on any other road.

Hoffman, Hogan Construction Company had one car on our team track.

Hirsch & Sons, the same.

M. Kahn, another small shipper using team tracks.

J. Kahlmeyer, have received three cars on team tracks of the Manufacturers Railway.

Kinloch Telephone Company is receiving and forwarding freight on the Manufacturers Railway team tracks.

A. Klauber & Sons use various team tracks of the Manufacturers Railway.

235 A. Kuenzel Manufacturing Company the same.

J. F. Lamson uses team track.

Langenberg Brothers use team track.

W. J. Lemp Brewing Company team track; Lemp Brewing Company operates the St. Louis & Western Cable Road, and has a connection with both the St. Louis Transfer Railway and Iron Mountain.

Lothman Cypress Company, general public.

Lox Safety Pin Company is located on Broadway and uses our team tracks. They are a little bit closer to our tracks than they are to the tracks of the Iron Mountain.

C. F. Luerhmann Lumber Company is on the Iron Mountain track. They loaded a number of cars on our side track. That company is located on the river bank near Carroll street.

The Missouri Realty and Investment Company is general public.

Madison Coal Company general public.

Manufacturers Railway Company, you know what that is.

Meyer Meinhart, general public.

Meyer Supply Company, team track.

Morris & Company have their own track on the Manufacturers Railway, and this plant has no other track connection.

The National Brewing Company uses team tracks west of Broad-

way. Their plant is somewhere west of our property, and we must be about six blocks closer to them than any other switching facilities that I know of; they are not connected in any way with the Anheuser-Busch Brewing Association.

John Nooter Boiler Works, located on Park avenue and Second street; they use a private switch. They are building now, the lease was closed some time in April. They are on the "Y" at Second and Park avenue.

The Northwestern Bottle Company, one car, general public.

W. D. Orthwein, general public.

Purina Mills, they have a private siding; they are not located on or connected with any other road at its loading station; the
236 Purina Mills purchase a certain amount of dried brewery grain, and load it on one of our tracks, taking the bill of lading from that loading station direct. They are served by our line only at that place. The loading place I spoke of is located just south of Dorcas street, between First and Second streets, at the west end of what we call our Horn yard, and I am quite sure that no other tracks gets to them there. That delivery track is about a block from the connection of the Iron Mountain, and three or four blocks from any team tracks on the Iron Mountain.

Henry Quelmalz Lumber Company, general public; they have a yard, I think, served by the Iron Mountain.

Reinschmidt & Haenni Construction Company use our public team tracks.

Ruemmeli Dawley Manufacturing Company, the same.

W. F. Ruprecht uses team track.

J. P. & W. H. Richardson, the same.

St. Louis Basket & Box Company, and the St. Louis Cooperage Company are served by switch owned by the Manufacturers Railway Company, that is, off from the St. Louis, Iron Mountain & Southern. For the operation of this switch, a description of the transaction is in a contract which we have filed as one of the exhibits (28). That contract provides that the Manufacturers Railway Company pay the St. Louis, Iron Mountain & Southern the full agreed value of the track.

Since they already had a connection from their track, which was put in when they operated the Manufacturers Railway, they agreed to leave that connection in and granted me the privilege of using their running track to reach that switch, in consideration of my granting them the privilege to handle their in-bound business, originating on the Iron Mountain and Missouri Pacific into those two places with their own engines, and of taking out with their engines business off the Iron Mountain and Missouri Pacific, in other words, we have swopped the use of tracks practically, and is is practi-
237 cally on the basis of a joint facility now. We took over the operation of the tracks, effective May 1st, 1910. The competitive business originating on the tracks is to be handled by the Manufacturers Railway alone. All in-bound business originating on lines other than the Iron Mountain and Missouri Pacific, we handle.

The St. Louis Dressed Beef & Provision Company have a track

near Broadway and Pestalozzi. It is served by no other railway. They have no connection with the Iron Mountain.

The St. Louis Dried Brewers Grain Company are located near Pestalozzi and Second street-, with no other track facilities, except the Manufacturers Railroad. I understand the grain company belongs to the Anheuser-Busch Brewing Association.

The St. Louis Pretzel Company, located at Rutger and Second streets is in closer proximity to our team tracks, right across the street from them, but six or eight blocks to the nearest team tracks of the Iron Mountain.

The St. Louis Rattan Company, located on Second street uses our team tracks at Dorcas street, being nearer to them than to any other team track.

The St. Louis Refrigerator Car Company is located just east of the Post Office yard, is served by the Manufacturers Railway Company's tracks alone, and no other tracks. They have some private tracks for cars. That concern is not controlled by Anheuser-Busch Brewing Association. It is my impression that they own a substantial interest in it, but not a controlling interest.

The St. Louis Tile Roofing Company is served as part of the general public.

Schaff, Pfau & Ganahl Planing Mill Company is a new institution being built just north of the Ganahl Lumber Company yard on Broadway, and will eventually have a private track. I believe they are now using the Ganahl tracks, and are not served by any other railroad.

The Schroeter Coal Company is located on Dorcas street, near Second, occupying a large coal yard, and is served on private
238 tracks by the Manufacturers Railway Company only. Within the same yard with the Coal Company, we have some extra team tracks or facilities which we use for the general public, if necessary. The tracks in that yard have no connection with the Iron Mountain. The Schroeter Coal Company has another station in South St. Louis on the Iron Mountain at Miller street.

Spuck Iron & Foundry Company use a team track on the Manufacturers Railway.

Trinidad Asphalt Company are served as a part of the general public.

Teichmann Commission Company likewise.

The Union Brewing Company uses any of our tracks that are convenient to them. We are about six blocks closer to them than any other railway.

Union Cooperage Company is general public.

C. H. Verberg is general public.

Fred Wagner is general public.

S. H. Williams is general public.

Warren Coke Company uses team tracks at Eleventh street, west of Broadway, and that selling station is served by no other railway and is about ten or twelve blocks from any other railway.

Waldstein Lumber Company on Second street. The most convenient team track is at Dorcas street.

Western Anthracite Company is a coal company using any tracks that are convenient. I think most of that business was shipments of fuel to the Manufacturers Railway Company.

Standard Furniture Company on Second street uses the Dorcas street team tracks. Probably the closest Iron Mountain track is the Miller street track, about an equal distance from ours, but there is a better roadway to our track.

Stecher Cooperage Company has a private yard, a private track off of Pestalozzi street line of the Manufacturers and has no other connection.

Stute & Co., general public.

Southern Coal Company uses the team tracks of the Manufacturers.

239 Western Foundry & Sashweight Company has its own private tracks off of Second street, and no other direct railroad connection.

C. Zimmermann, team tracks.

Independant Coal Company has a track off of the Manufacturers at Second and Merchant, and no other direct railway connection. They have leased a private yard with private tracks.

The South Side Coal Company, I think its business was fuel for the Manufacturers Railway.

"Examiner Hillyer: Has the Busch Glass Manufacturing Company any other connections?

"Mr. Moore: There is a physical connection, I believe, that the Iron Mountain used when the Iron Mountain was operating the Manufacturers under lease, but located on the Manufacturers Railway right of way, partly, and partly on the street. Since the Manufacturers began to operate its own property, we did not use that track, neither do we allow them to use it. It is on our property. I am not qualified to speak about the ownership of that company."

Of the list of industries shown upon the statement, and concerning which I have been speaking, the following are located on the lines running from the Iron Mountain west to the plant of the Brewing Association:

Purina Mills Loading Station;
St. Louis Refrigerator Car Company;
Schroeter Coal Company;
Morris & Company;
St. Louis Dressed Beef Company;
Stecher & Company.

What I have stated about the difference in charges on coal and lumber moved to industries located on the lines of the Manufacturers and the other lines in the City of St. Louis, applies to all

240 other commodities besides coal and lumber. The same difference in charges would exist.

I received my first official notice of the intention of defendants to cancel the tariffs, allowing us divisions on absorption of charges on January 1, 1910. The envelopes which you show me now are those in which the notices were received; the plain envelope having upon it nothing indicating the road from which it was sent,

contained the notice of the Cotton Belt and the notation upon it was placed there in my handwriting at the time.

Exhibits Nos. 42 and 43 are the envelopes identified by the witness.

Each of these envelopes show- that they were mailed at the "Annex Station," St. Louis, Missouri, December 31, 1909, between 6:30 and 7 o'clock P. M., except the one from the Rock Island lines, and that was mailed on January 3rd, 1910.

Exhibits 44 to 60, both inclusive, constitute files of correspondence between the Manufacturers Railway Company and the various defendant lines, commencing with the cancellation notices, and subsequently thereto, all of which was written or received, either by me or under my direction.

I have prepared a table, showing the revenues, expenses of operation, etc., of the Manufacturers Railway business.

241 Exhibit 61, said table, is as follows:

Manufacturers' Railway Company.

Statement.

	Expenses.	Operating revenues.
Apr., 1909	$9,079.08	$27,731.44
May, 1909	6,111.77	15,380.77
Jun., 1909	8,243.58	18,901.17
Jul., 1909	9,019.56	20,458.45
Aug., 1909	8,305.57	21,291.24
Sept., 1909	8,695.53	18,220.92
Oct., 1909	10.101.53	16,178.37
Nov., 1909	8,824.01	15,407.67
Dec., 1909	9,865.25	14,279.59
Jan., 1910	9,724.01	12,948.56
Feb., 1910	7,267.14	13,785.38
Mch., 1910	7,766.27	19,957.07
Total	$103,003.30	$214,540.63

Fixed charges—per month:

$6,827.00—12 mo. 81,924.00	$184,927.30
Surplus—April. 1, 1909—Mch. 31, 1910	29,613.33

NOTE.—42,589 carloads handled.

Expense per car, on operating basis, $2.42.

Expense per car, on operating and fixed charges basis $4.34.

The table (Exhibit 61), shows that during the period covered by it, it cost us $2.42 per car to operate alone, and on an operating basis, plus fixed charges, it cost $4.34 per car.

The Manufacturers Railway Company, as a whole, presents about as expensive a piece of operation as can be conceived in the way of a railroad, because of its many switches, many crossings, steep

grades and sharp curves. The heaviest grades are on the Dorcas street and Pestalozzi street lines, and some of the tracks leading off of these lines. Those are the two lines from First to Ninth and from
242 First to Thirteenth streets. The grade over those two lines is about 4½ per cent. On the Second street line, there are no grades presenting unusual features, except the grade south of Utah street, going up to the switch off of our Second street line into Ganahl's which offers probably more than the 4½ per cent. grade. That is the only Second street grade that amounts to much. That grade makes traffic in that direction expensive for operation. The grade on the west viaduct approach is a compensated grade, not presenting any very difficult features. The east end is more difficult to operate. While there are sharp grades, they can be overcome readily by the motive power we use, but, of course, making it more expensive. Our engines will take a big load, good engine capacity, up the Pestalozzi street line. I think along our Second street line, we could probably handle forty cars nicely with one of our eighty-ton engines. The maintenance of our track is excessive on account of so much street track, many streets being paved with granite and some of the yards with vitrified brick, making maintenance and upkeep expensive, and Second street, a mud street, south of Rutger, is expensive to keep clean enough to operate over. There is no way in which we can eliminate the grade spoken of, because our ordinances require us to maintain street grades. The charges of the roads for demurrage, car service, or rental, increases the cost of operating our road. Under what we call the car service basis, as opposed to the per diem basis, we are at a disadvantage of $4 on a six-day detention of a car. On a per diem plan,
243 switching companies are allowed the six-day reclaim. After six days, they pay thirty cents a day to the owner of the car. They pay for that six days, but it is reimbursed to them by the carrying line giving them the car to switch, so, practically, have six days use of the car without expense. After seven days, they would have it at an expense of thirty cents. The Manufacturers Railway for six days would have to pay, not to the owner of the car, but to the delivering line, $4, and if we kept it seven days, it would cost us seventy cents a day more than it cost the switching lines, members of the American Railway Association. The Manufacturers Railway has applied for membership in that Association. I learn from the correspondence that our application must be endorsed by two-thirds of our immediate connections before we can be admitted.

Exhibit 62 is the correspondence concerning our application for membership in the American Railway Association. This correspondence shows that the Manufacturers Railway Company applied for admission to the per diem rules agreement, which would put them on the same basis as other switching roads in St. Louis, but was denied. The letter of January, 1910, from W. F. Allen, secretary, states that the requirements for admission to the per diem rules agreement are, among other things, as follows:

"The application must be favorably endorsed by at least two-thirds of the lines connecting with such road."

Under the rules spoken of, our application for such membership would have to be endorsed by both of our connecting carriers,
244 the Iron Mountain and the St. Louis Transfer Railway.

Most of our track is constructed of 85-pound "T" rail, some of its gutter rail, that I am told weighs 136 pounds to the yard, and we have a very limited amount of switching tracks of 65-pound rail; the construction throughout is very substantial. Many special frogs and crossings are necessary, owing to the physical condition which we have to meet. Our $2 switching charge is not compensation for the services performed by the Manufacturers Railway Company. The city, besides requiring us to switch at $2 a car, on business where we made any charge over the St. Louis rates, reimburses us by granting franchises on certain streets, and the right to build and operate switches from the main line placed on these streets, at a rental, which, while more than is paid by any other line in St. Louis is still nominal, considering the value of the property over which the track is operated.

"Mr. Cassoday: How does that switching charge compare with the charges for switching made by other railroads in the City of St. Louis?"

Mr. Moore: I have a freight bill before me, Merchants Bridge & Terminal Company, movement of a car 3.16 miles on which there are two switch movements. The Terminal received $3; the Missouri Pacific, $6.25. Another freight bill issued by the Iron Mountain, switching about a mile and a half. The switching charge on that is $7.79. Again, a switching movement in the Iron Mountain yards at a charge of $6 for less than a mile. Another switching bill over the Iron Mountain, showing switching charge of $5 for a dis-
245 tance of 5.1 miles. Another switching bill of the Missouri Pacific and Merchants Bridge & Terminal Company, a movement of 2.4 miles, a charge of $3 for the Terminal and $11.12 for the Missouri Pacific.

Exhibit 63, consists of the freight bills just spoken of. These bills represent general switching that has been handled so far as the Iron Mountain & Missouri Pacific are concerned, on the rates established by the Warehouse Commission of Missouri, a class of switching of which the Manufacturers has but little, and if we did have it, we would have to perform it at $2 a car, according to our ordinance. Our switching is different in that it is almost exclusively switching to and from connecting lines to industrial locations or to the public. On a basis of $2 a car, our revenues on 42,589 cars handled during the period covered by the statement I introduced would be $85,178. That would have left a deficit on operating alone, the operating expenses exceeding $103,000, excluding fixed charges. If the Commission were to fix a joint rate, as asked in the complaint, and if we could arrange for a level rate per car, in my opinion it would require a charge in excess of $4.34 applicable on all cars, to constitute a reasonable allowance to the Manufacturers Railway Company for the services performed by it; a close margin would be $4.50 on a level rate. By "level rate," I mean for all commodities we handle, with no ex-

ceptions, and without distinction as to points of origin or destination.

Inasmuch as our expenses are $4.34, the figure $4.50 per car
246 would contain an element of profit. I said "a level rate," put it in another way—I mean something that will average us as much as $4.50 per car, whether it is a percentage or a division of the through revenue. In my opinion, the better way of arriving at the division, i. e., the better and fairer way for all interests concerned, shippers and everybody else, would be a fixed allowance per car, because it is more easily supervised and held in due bound by the Federal authorities.

At the last annual meeting of the Manufacturers Railway Company, March 8, 1910, our capital stock was increased.

Exhibit 64, is a copy of the minutes which contains the following resolution:

"Whereas, the present authorized capital stock of this Company is insufficient as a source of capital, with which to construct and operate this Company's railroad and to pay for the necessary property and equipment, and to acquire the additional rights of way and other necessary property, and to pay for the additional construction projected for extension of this company's line of railroad,

"Now, therefore, Be it Resolved that the capital stock of this company be, and the same is hereby increased from two hundred and fifty thousand ($250,000) dollars, its present authorized capital stock, to Five Million Dollars ($5,000,000), said capital stock as increased, to consist of fifty thousand (50,000) shares of a par value of One Hundred Dollars ($100) each."

Also a resolution authorizing a five million dollar bond issue for the purpose of the company's business, including refunding of its present indebtedness and acquisition of lands, lines of rail-
247 road and equipment and appurtenances. Also another resolution as follows:

"Resolved, that the Board of Directors and the officers of this Company, under the direction of the Board, be, and they are hereby authorized and directed, as soon as practicable and feasible, to procure by purchase or otherwise, land suitable for terminal purposes and right-of-way, and to construct tracks, erect buildings, inclines and appurtenances therefor, and to purchase or otherwise acquire equipment to operate property so acquired or constructed."

Also another resolution as follows:

"Resolved that the Board of Directors and officers of this company, under the direction of the Board, be, and they are hereby authorized to acquire such railroad or railroads as may be desirable or necessary to complete a belt line or lines in Illinois and in St. Louis County, Missouri."

The purposes of the increase, as shown in the minutes were determined upon before January 1, 1910, and are the result of plans devised prior to that date, and were discussed and determined upon along last summer.

Exhibit 65 is a copy of a tax bill and receipt, showing taxes paid by the Manufacturers Railway for the year 1909, on

its property in the City of St. Louis as assessed by the State Board of Equalization of Missouri against railroad companies.

Exhibit 66, consists of 21 through bills of lading executed about March 28, 1910, by the Manufacturers Railway Company for property received from Anheuser-Busch Brewery, and moved over different lines from St. Louis to various destinations. They are upon blanks of the individual carriers, signed by the Manufac-
248 facturers Railway. The shipments covered by them actually moved to destination and were delivered to the owners of the bills of lading, so that each bill of lading covers a movement from point of origin on our tracks to final destination or delivery.

I was present during Mr. McChesney's testimony and heard him refer to the fact that prior to the meeting of December 13th an article had appeared in the newspapers, purporting to be an interview with me. The newspaper clipping which you now show me is the article referred to which appeared in the St. Louis Star on December 9, 1909 in the nature of an authorized interview with me. Such portion of it as is included in quotation marks is verbatim, because I insisted upon writing it, instead of having them put their own construction on what I was saying.

Exhibit 67, is the newspaper clipping just referred to.

The newspaper heading is as follows:

249 "Busch to Build a Trunk Line.

Manufacturers' Railway Formally Offers to Co-operate with Southwestern Roads for Another St. Louis Railroad System.

Plan to Consolidate 3 Lines.

Busch Terminals to Increase Capital, Build East Side Belt and Use Great Car Floats Across River, President Moore Announces—New Passenger Station Contemplated—Will Remain Independent.

New Plans of the St. Louis Manufacturers' Railway Ass'n.

President George F. Moore, of the St. Louis Manufacturers Railway, representing the Busch interests in railroads and terminals, gives The Star the following outline of plans for improvements:

To co-operate in building a new trunk line into St. Louis from the Southwest.

To operate big car floats or ferry, at St. Louis, transporting trains across the Mississippi river.

To increase the capital stock to $2,000,000, at once.

To build a belt line around East St. Louis, connecting with all East Side railways. Will consolidate with Illinois terminals.

To build a passenger station in St. Louis later.

To maintain absolutely independent local terminals.

Whether the Free Bridge will be used in any railroad connection by the Manufacturers' Railway is problematical."

250 The authorized interview and statement of Mr. Moore is as follows:

"In the early months of 1887, the Anheuser-Busch Brewing Association and the subsidiary industries which had grown up in its immediate neighborhood had reached such a stage of development as made it necessary to secure a direct railroad service.

"Mr. Adolphus Busch associated himself with a number of other gentlemen interested and applied for and received a charter under which the present Manufacturers Railway Company was constructed. Naturally the railway company was forced to keep abreast with the rapid industrial growth of South St. Louis, and for that purpose appeared on more than one occasion seeking additional franchises for trackage rights.

"During the negotiations with the city, no formal pledge has ever been asked of its owners to retain the integrity of the company as an ind-pendent switching and terminal railroad, but the Busch interests voluntarily have pledged to the citizens of St. Louis that they will maintain the Manufacturers Railway Company as an independent switching and terminal proposition, thereby gaining for their road the hearty co-operation of all interests dependent for railway competition in order to secure the best of service.

"The incorporation of this railway, growing from the necessities of a few industries, finally reached a magnitude far exceeding the original plan of its owners until within the last few years it is claiming much attention as an avenue of escape from the congested districts of North St. Louis.

"The capitalization was at first placed at $25,000, later increased to $100,000 and then further increased to $250,000, the entire stock being held by the board of directors and the Busch family. It is erroneous to say that the Anheuser-Busch Brewing Association is interested financially in the railway company. The association is its largest customer, but never in the history of the road has the association owned or controlled a single share of its stock.

251 Busch in Control.

"Mr. Adolphus Busch, the pioneer developer of South St. Louis, is now and has always been the major stock owner, and, together with his son, A. A. Busch, have always stood ready to further the interests of their Railway Company. It is on account of their public spirit and faith in the property that the Manufacturers Railway Company has developed to its present importance on so small a capitalization. Funds at all times to any amount would be advanced by either of the major stockholders and the property has largely been created upon a current liability basis, the borrowed capital far exceeding the entire capitalization.

"There seems to be a time in all growing concerns when you are either too small to occupy a certain fixed position, or too large to continue in the same field of endeavor. The Manufacturers Railway Company has found this to be the case, and with a view of extending its circle of usefulness, has decided to cross the Mississippi

River by means of car floats and to construct around the City of East St. Louis an outside belt, making connections on high ground with all railroads diverging from East St. Louis.

"This plan has been worked out in detail and it is likely that a consolidation with the Illinois Terminal on the north will enable the belt line to be in operation not later than one year from now.

"This plan has been elaborated in order to get the most out of the property as it now exists, and contemplates using that part of the Manufacturers Railway already constructed north of Utah street.

"The public is aware that another franchise has been granted this company from Utah street on the north to the River des Peres and Morgan Ford road on the south. The building of a line on this franchise would involve an expenditure of several million dollars, and, of necessity, would need the co-operation of some trunk line desiring to secure an entrance into St. Louis.

252 "Considerable attention has been directed toward a feasible western line that would profit by such terminals as could be built on this franchise. With that end in view, certain properties in Oklahoma and Indian Territory that are at present suffering from localization or, in other words, without independent outlets to great gateways, have been studied with a view of forming a merger which, combined with certain new construction would reach the St. Louis gateway and the Manufacturers Railway Terminals. Such a group of roads can be found with their Eastern termini at Fort Smith and their Western termini at Guthrie, Oklahoma; and the necessary connecting track could be built so as to reach the Kansas City, Mexico and Orient on the west and the new line between the Frisco and the Iron Mountain from Fort Smith to St. Louis.

"Little beyond what is stated above has been accomplished in this direction, but the Manufacturers Railway Company stands ready at any time to join hands in an enterprise that would bring into St. Louis a strong trans-continental trunk line.

Car Floats.

"In adopting the car float plan, which would enable us to deliver to all roads having river inclines, the question of a bridge and tunnels was also seriously considered. Owing to the channel of the river and the scouring that takes place, whenever there is a freshet, a tunnel, unless very deep, would prevent this scouring, and as a consequence cause more serious overflows than we now have. For that reason the tunnel proposition has been abandoned. It does not seem good policy to attempt the building of a bridge in the face of the two existing bridges, the McKinley structure, now well under way, and the Municipal Bridge, which seemingly must be built whether needed or not. The policy of the Manufacturers Railway Company is to co-operate with the Municipal Bridge in every way consis-

253 tent with its relations to other railroads. It would be glad to have such terminals as it now has or may construct used by any and all lines that might desire to use them. This is an obligation placed upon it by its franchise, and it is an obligation that it

would gladly fulfill. Its present terminals, which have been more than doubled within the year, are not in excess of what is needed for the care of its own business. When occasion demands, there is much property owned by it—that can be converted into additional yard room.

Won't Sell Out.

"A number of bona fide offers have been made for the purchase of the Manufacturers Railway, but its owners are not inclined to sell and would view with distrust a merging proposition unless they could be assured that they could retain a controlling interest in the voting securities.

"You have asked me the advisability of pressing to completion the construction of the Municipal Free Bridge. I understand from such conversations as I have had with those entrusted with this project that the die is cast and that the bridge must be built. Such being the case would an opinion favorable or adverse, alter the situation?

"The property that has been acquired by the railroad and by those who are holding property for it will be used for terminal purposes and it is our earnest hope that at some day we will be able to build a passenger station that will accommodate more than one line.

"At present and in the near future it seems that our activities must be confined to the handling of freight. We have been twenty-two years growing to our present stature and have learned that patience is an admirable attribute, so we are willing to proceed quietly along our course and trust in the growth of St. Louis for our future.

"Those interested in this enterprise have been shown so
254 many kindnesses and so much consideration by the public of St. Louis that they feel inclined at any and all times to meet the public fairly and squarely on every proposition that may come up; this includes the Free Bridge, increased terminal facilities, eastern extensions and western trunk lines. We contemplate increasing the capital to $2,000,000, and by so doing will be enabled to care for all outstanding liabilities and have a very considerable working fund on hand for future improvements.

G. T. MOORE,
"Pres. Mfrs. Ry."

Exhibit 68, consists of four freight bills, covering shipments of beer from St. Louis to different destinations. The cars had been delivered to the Chicago & Alton, Vandalia, B. & O. Southwestern, and Southern, by way of the Manufacturers Railway, the Iron Mountain, the Southern or the Terminal, all on the same date, April 12, 1910. They show that on four cars, the lines named, according to tariffs now effective, paid the Iron Mountain $3 intermediate switching between the Manufacturers Railway and the lines named, in addition to the Terminal Railroad charge that they would have to pay had we delivered these cars over the viaduct direct to the Terminal. Under the tariffs at present effective, all business that

we deliver to these lines or other lines through the Terminal would carry $3 switching charge in addition to the Terminal Railroad charge.

Cross-examination by Mr. Jeffrey:

These shipments were not delivered to the Wiggins direct, because I wanted to establish the fact that on all this business, if delivered to the Iron Mountain and handled under tariffs now effective,
255 there would be assessed an additional $3, or $3 intermediate switching charge for the Iron Mountain. If we had delivered to the Wiggins' Ferry, we would have saved $3 a car to the road handling that business, because that $3 charge is absorbed by the line getting the road haul. I will file a statement, showing our equipment on July 1, 1908, together with our directors and officers and stockholders. This statement and list was filed but not marked as an exhibit. It shows as follows:

"The railway equipment at that date consisted of two 80 ton and one 125 ton Locomotives, and one Tool-car, making an aggregate cost of $46020.00.

The Directors were Mess. Adolphus Busch, A. A. Busch, Wm. D. Orthwein, E. A. Faust, Geo. F. Meyer, G. F. Decker, and O. H. Rassfeld.

Officers and stockholders of Manufacturers Ry. July 1, 1908 were Mess. Adolphus Busch, Pres. & Treas., Wm. D. Orthwein, Vice Pres., O. H. Rassfeld, Secy., and Mess. Geo. F. Meyer, A. A. Busch, E. A. Faust, G. F. Decker, together with the officers constituted the stockholders.

The only change in stock ownership since Dec. 1, 1909, was the transfer of three shares from Mr. A. A. Busch to the following gentlemen, Mess. Hy. Menzenwerth, A. C. F. Meyer, C. E. Koons, one share each."

Our monthly pay-roll averages about one hundred and ten men.

Our officers are G. F. Moore, president; Adolphus Busch, vice-president; Otto Rassfeld, secretary and treasurer; F. J. Degler, auditor; John F. Baulch, superintendent; Richard Muelderg, traffic manager; S. J. Sullivan, road supervisor.

Our directors are Adolphus Busch, August A. Busch, Ed-
256 ward A. Faust, Otto Rassfeld, George F. Meyer, William D. Orthwein and G. F. Moore. There are three of the directors who are directors or officers of the Anheuser-Busch Brewing Association. They are Adolphus Busch, August A. Busch and Edward A. Faust. There are two officers of the Railroad Company who are officers of the Anheuser-Busch Brewing Association: Adolphus Busch and August A. Busch. Mr. Muehlberg is traffic manager of the Brewing Association, but that is not an elective office. I am not an officer of the Anheuser-Busch Brewing Association.

The Pestalozzi street line runs from First to Ninth street. I will file a statement as to the length of that track.

This statement was filed later in the form of a letter dated May 29, 1910, not marked as an exhibit. It gives the mileage as 2600 feet and says:

"This line begins at a point north of Arsenal St., near First St., running for a distance in a northwesterly direction, then almost directly west through private right of way to Broadway. From the west line of Broadway it occupies an alley to the east line of Ninth Street."

Our mileage serving the brewery is about nine miles. Our total mileage is twenty-five miles, about two and one-half miles of main line, the rest is switches, team and sidetracks. We use the River Yard to receive all the business from the St. Louis Transfer Railway. All that business is handled through that yard, broken up. It amounts to pretty nearly all of our business. Prior to March 1st, we handled from 125 to 130 cars a day there, about 3,600
257 cars a month; that is also the yard where we hold the empties. We also hold the loads in there that we have no immediate way of delivering. It is a general utility yard.

The Manufacturers Railway Company have four engines but no cars. The refrigerator cars belong to the various railways of the United States, partly to the St. Louis Refrigerator Car Company. If the St. Louis Refrigerator Car Company's cars are delivered back to us, we store them in our yard until called for use. We consider them a home car, and make no charge for storing them, but we use them for any business that offers, whether Anheuser-Busch or anybody else. The memorandum of stock ownership, introduced in evidence, shows the ownership on March 8, 1910. We commenced to build up our Second street track last summer. It ends up at La Salle and Second street. That line was completed from Second street to Rutger street, before I came here. Some of these industries along Second street were there before the road was built. The coal yard, of which I spoke, is bounded by Merchant, Rutger and Second streets. I think they began to work there in January of this year. The tracks in the yard accommodate about six cars. We must have twenty-two or twenty-three miles of spur track, switches and yards. The Manufacturers Railway proposes to build a line in Illinois. That was decided when the franchise was obtained, No. 22,005, April 8, 1905. The land on which the St. Louis Cooperage Company and the St. Louis Basket & Box Company was located, I think was owned by Adolphus Busch, but there is other land down in there, which I know is not owned by any
258 of the Busch family. I have been trying to buy some of it.

I will file a statement showing the team track loading as distinguished from our spur track loading. We do not do less than carload business. There was no absorption under the tariffs on coal originating west of the Indiana, Illinois state line, sand, grain, hay or ice. On these excepted commodities there has never been any division offered that I know of to the road. We do some interwork switching. Our tariff, I. C. C., No. 7 covers that. On that interwork, we charge $1. We collect it from the Anheuser-Busch Brewing Association. On the commodities on which there was no absorption, we collect $2 a car from the consignee or consignor. I do not consider the $2 as reasonable compensation for the services. The $2 is fixed by ordinance, which is $2.34, less than it

cost us to handle that business. Fully ninety or ninety-five per cent. of our interwork business is for the Anheuser-Busch Association. That $1 rate for interwork switching has been effective a number of years, and I think it was recommended and put in effect by the St. Louis, Iron Mountain & Southern when they operated the road and has not been changed since the Manufacturers Railway operated the road. There are three small electric roads that wanted to get into St. Louis over our city limits extension. Part of our negotiation is based upon an assertion that we can furnish a passenger depot so that they can render passenger service into and out of St. Louis. Then for some time it has also been planned by the people who own the Manufacturers Railway, to join in the building of a road to the southwest, at least they have had me making a number of
259 investigations along these lines. We have no freight station as yet. Most of our team tracks are under sheds. On cars that come to our line, we pay car rental, after two days per diem, we pay $1 to the delivering line. This is because we are not a party to the per diem agreement of the American Railway Association.

The Manufacturers Railway issues bills of lading on everything we forward. I do not think we have any form with Manufacturers Railway printed along the top. The greater part of the business is handled on shipping tickets, the same as, I believe, prevails almost anywhere in St. Louis. The shippers can exchange them for a bill of lading if they wish to, but rarely ever do it. I do not think this process differs any from that employed by the Terminal Railway Association. It is practiced in St. Louis. The shipping ticket governs the bill of lading, so far as the issuing receipt is concerned, and I have personal knowledge of a number of lines. We do not issue way-bills. We card the car. Referring to Exhibit 66 on printed Iron Mountain & Southern blank, they furnish us the bill of lading for use. We have quite a supply of them in our office. The shipping tickets contain the uniform bill of lading clause and guarantee, and they are practically bills of lading for all purposes, except banking, and the greater part of our business is on shipping tickets. We have blanks into which we can insert any carrier's name, in issuing the bill of lading, and these we use in preference to the carrying line's bill of lading, unless they were particularly requested. We issued the uniform bill of lading.

260 "Mr. Jeffrey: The point I am making is this: He does not issue any negotiable bill of lading, the Manufacturers Railway does not. You say this is your own bill of lading; I say it is Iron Mountain bill of lading.

Mr. Moore: It is the billing of the shipment on which the consignee claims his car and gets it, and upon which the consignee could have drawn on it if he wanted to.

Mr. Jeffrey: It is not signed by an Iron Mountain agent, that bill of lading is not.

Examiner Hillyer: Don't you accept that shipment on your road?

Mr. Jeffrey: Yes, but he claims that it is his bill of lading.

Mr. Moore: I claim we issued the bill of lading."

I will produce for the record, one of our bills of lading.

We are basing our reports to the Commission, on the supposition that we will get reparation. My office reports are so arranged that we can present bills to either railway companies or industries at whatever rate the Commission determines we must accept as our remuneration. We are not doing our work for nothing. We are keeping our accounts. On these charges on which we have asked for reparation, we are not presenting the bills to the individual shippers, because we hope to make the only reparation claim come to us and only have one claim instead of a multitudinous number of claims. I am running a book account with our customers. Our method of shipping has not changed any since March 1st. Where shippers load on team tracks, they could load on the Iron Mountain team track.

"Mr. Jeffrey: Because he loads over a team track, he has
261 not got any different facility over that team track than he has over the Iron Mountain team track, has he?

Mr. Moore: Only the elimination of some hard hills in some cases, bad streets in others, and the saving of time whenever it would enable him to use his time to better advantage.

Mr. Jeffrey: Then you claim to offer him better facilities, that the Iron Mountain ought to pay for, is that your idea?

Mr. Moore: I think that follows, or he wouldn't use it."

We are not asking the Iron Mountain to pay for it.

Exhibit 41 includes everybody that has shipped over our road between May 1st, 1909, and May 1st, 1910.

The value of the stock of the Manufacturers Railroad is no more than par if the current liabilities are paid. The road is constructed largely on current liabilities,—on borrowed money. We have notes, but no bonded indebtedness. We owe the St. Louis Trust Company $350,000, Adolphus Busch $390,000 and the South Side Bank $50,000.

Examiner Hillyer: What is the average charge assessed for the service now?

Mr. Moore: Follow a car of beer, if you will, from here to New York. The rate to New York on beer is 35 cents. That is divided, 2 cents bridge at St. Louis, 3 cents lighterage in New York; that would be taken out before prorating.

Examiner Hillyer: Leaving 30 cents to prorate.

Mr. Moore: Now, that two cents,—prior to March 1st, our charge of $5.50 would be taken out before pro-rating. Two cents per hundred of that rate goes to the Terminal Railroad Association, and is handled as advance charge by the line on the east side. Two cents per hundred minimum on a weight of 30,000 pounds, revenue, $6.

We claim the Manufacturers Railway Company in prepar-
262 ing that for shipments, has incurred as much operating expense, a fixed charged of expense, as the Terminal Railway has incurred in handling that identical shipment, and I think a fair and reasonable rate to them would be a fair and reasonable rate to us. We have to yard cars, we have to place them for loading; we have to deliver the load to the train and consolidate the train and deliver it to the Terminal.

In hauling over the Terminal, they have the load about six hours

and get a reclaim for six days, and we have the car four days and its cost us $2 to hold it.

I swore to the bill of complaint in Manufacturers Railway vs. St. Louis & Iron Mountain & Southern Railway in the United States Circuit Court for this district.

Defendant's Exhibit 1, is the tax return made by me to the State Auditor at Jefferson City, and is sworn to by me. That mileage does not include any leased track.

Defendant's Exhibit 2, is a report of the taxable property of the Manufacturers Railway Company, filed with the State Auditor, January 10, 1910.

Cross-examination by Mr. Butterfield:

Prior to March 1st, 1910, there was a very decided complaint in the City of St. Louis about inadequate facilities. The amount of the rental provided for in the lease, $24,000 a year, was probably discussed by a number of people. There was a calculation made of the rental value or the interest upon the investment. I made that calculation and tried to make a fair valuation. I computed
263 the interest upon that fair valuation and the $24,000 represents the result, 6 per cent. on $400,000. The rental was fixed by estimating the value of the property at $400,000, and computing the rental upon that at 6 per cent.

The lease, as a whole, gives us the privilege of using those tracks for railway purposes, subject to the limitation of interfering—that we must not interfere with the Anheuser-Busch Brewing Association's reasonable use of these (sidings) tracks. I have used all these tracks, to my personal knowledge, for public business. I have never been stopped or interferred with by the brewery for any use that I have seen fit to make of these tracks up to the present time. Neither have I burdened them with cars in any way, or caused myself any unnecessary operating expenses when I handled the business for the public on some other track to the satisfaction of the public, and for the betterment to my own operating conditions. There is no other document to my knowledge, which in any way specifies the relative rights of the Brewing Association and the Manufacturers Railway Company in using these tracks.

I believe I did say that about nine miles of our track was used almost exclusively to serve the Anheuser-Busch Brewery. I did not mean to say that it was all in that described territory. About nine miles is covered by the lease. The lease refers to a "blue print attached hereto." I have the blue print at my office, and will produce it. The Anheuser-Busch Brewing Association controls the routing of their out-bound shipments. The Lemp Brewing Company have the Western Cable Railway, running from the river to their
264 brewery, though I don't know about its ownership. We treat the cars of the St. Louis Refrigerator Car Company as home cars, but we use them by consent of the St. Louis Refrigerator Car Company for any business that originates on our line, for which we do not have suitable equipment. Some of those cars have a

sign "Anheuser-Busch" on the outside, and some do not. I have used some with that sign on them for other shippers. I have used them for the American Brewing Company which also ships out beer under ice. They have the privilege of using the St. Louis Refrigerator Car Company cars whether painted with "Anheuser-Busch," or whether they are not, but we generally furnish the ones that are not painted "Anheuser-Busch." The empty Refrigerator Car Company cars which are stored in our yards from time to time and bearing the Anheuser-Busch label are there for the use of any one who wants them. I have shipped marble and soap in refrigerator cars. Most of the cars bearing the label "Anheuser-Busch," are used for beer shipments.

RICHARD MUEHLBURG, testified:

I am Traffic Manager of the Manufacturers Railway Company and also of the Anheuser-Busch Brewing Association. I have been Traffic Manager of the railway since the summer of 1890. As such traffic manager I filed the different tariffs issued by that company.

Exhibit 69, the statement which you show me, was prepared by me and refers to all of the different tariffs of the Manufacturers Railway Company, giving the charges prescribed by those tariffs, and is as follows:

265

"Manufacturer's Railway Company's Tariffs.

	Outbound.	Beer Pkgs. Returned.	Inbound. All Other Frt.	Via.
No. 1–I. C. C. No. 1. Effective 4/13/06.	$3.50 all commodities.	$1.50	$2.00	Both connections.
No. 2–I. C. C. No. 2. Effective 1/2/09	$3.50 Note 1	$2.00 Note 2.	$1.50	$2.00 Iron Mt. connection.
	$5.50 Note 1	$2.00 Note 2	$3.50 Note 1	$4.00 Note 2. $2.00 Wiggins "
No. 3–I. C. C. No. 3. Effective 3/22/09	$5.50 Note 1	$2.00 Note 2	$3.50 Note 1	$4.00 Note 1 $2.00 Note 2. Both "
No. I. C. C. No. 4. Effective 4/22/09.	Do.	Do.	Do.	Do. Do. Do.
I. C. C. No. 5. Effective 7/30/09				Demurrage and Storage Rules
No 4–I. C. C. No. 6. Effective 7/30/09	Do.	Do.	Do.	Do. Do. Both connections.
No. 5–I. C. C. No. 7. Effective 12/7/09.	Do.	Do.	Do.	Do. Do. Do.

Note 1—Applies where through rates are applicable to or from industries on Manufacturers' Railway.

Note 2—Applies on all other freight."

The Manufacturers Railway Company was a party to joint tariffs; they were a party to Supplement No. 2 of the Tariff issued by R. M. Frazer, Agent, being local and joint freight tariff number 100-A; I. C. C. No. D123.

Exhibit 70, is a Division Sheet, effective June 9, 1909, accompanying said Supplement No. 2, and shows a division of ten cents a ton allowed the Manufacturers Railway Company on bituminous coal in carloads from stations and mines in the State of Illinois to St. Louis, Missouri, and points and industries taking same rates. Issued May 8, 1909, effective June 9, 1909.

The same is true as to Supplement No. 3 to I. C. C. No.
266 D23, and Division Sheet No. 3, and such tariff sheet was introduced as Exhibit 71.

The local and joint freight tariff issued by William Cameron, agent, being No. 100-B, issued September 1, 1909, effective October 4, 1909, I. C. C. No. D-22, covers bituminous coal by carload. The Manufacturers Railway is a party to it as a concurring line. There was a Division Sheet, No. 1, accompanying that tariff.

Exhibit 72 is the Division Sheet. It shows same division of ten cents a ton as above.

Supplement No. 1 to the above tariff No. 100 B., issued by William Cameron, agent, October 13, 1909, effective November 15, 1909, being Supplement No. 1 to I. C. C. No. D-32, names the Manufacturers Railway Company a party as a concurring line.

Exhibit No. 73, is Division Sheet No. 2 accompanying that tariff, and provides for a division of ten cents a ton to the Manufacturers Railway Company.

Supplement No. 2 to the above tariff I. C. C. No. D-32 effective March 1, 1910, discontinues such joint rates as to the Manufacturers Railway Company.

The Manufacturers Railway Company is a party as participating carrier to freight tariffs of local joint and proportional rates applying on salt in carloads, No. 95-A, being I. C. C. No. 164, issued by J. F. Tucker, at Chicago, December 18, 1909, effective February 1, 1910.

The Manufacturers Railway Company is named as one of the issuing carriers in Supplement No. 4 to Western Classification No. 47, being Supplement No. 4 to I. C. C. No. 5, issued December
267 1, 1909, effective January 15, 1910, except as noted in individual items issued by F. O. Becker, as agent.

The Manufacturers Railway Company is one of the issuing carriers of Supplement No. 5 to Western Classification, No. 47, being Supplement No. 5, to I. C. C. No. 5, issued January 8, 1910, effective February 22, 1910, except as noted in individual items issued by F. O. Becker.

The Manufacturers Railway is shown as an issuing line in St. Louis, and East St. Louis Lines, Terminal Lines Switching Tariffs, No. 1, I. C. C. No. 671, issued by F. A. Leland, agent, effective January 20, 1910, and the tariff of the Manufacturers Railway Company effective at that date is included in full in that publication. It is shown as item 32-B, on page 51. Beginning with the sixth page, the industries served by the Manufacturers Railway Company are enumerated in that tariff.

The Manufacturers Railway Company is named as an issuing line in Supplement No. 1 to I. C. C. Number 671, being East St. Louis

and St. Louis Terminal Line Switching Tariffs No. 1, issued by F. A. Leland, agent, and effective May 10, 1910.

The industries located on the Manufacturers Railway Company are enumerated in that tariff.

It is shown as an issuing line in Supplement No. 2 to the same tariff effective April 20, 1910, and the industries located on its line are enumerated in that supplement.

It is also shown as an issuing line in Supplement No. 3 to I. C. C. No. 671 issued by F. A. Leland, agent, effective May 20th, 1910.

268 The Manufacturers Railway is named in Terminal Railroad Association of St. Louis, Freight Tariff No. 23-A, I. C. C. No. 85, issued December 10, 1909, effective January 20, 1910, issued by J. L. Penney, traffic manager.

It is also named in the tariffs of the Wiggins Ferry Company, East St. Louis Connecting Railway Company, and St. Louis Transfer Railway Company, being Freight Tariff No 23-A, I. C. C. No. 64, issued December 10, 1909, by L. W. Putnam, Commercial Agent, effective January 20, 1910.

The rates shown by the Terminal Railroad Association and Wiggins Ferry Company tariffs are the rates for movements to points upon the Manufacturers Railway line, as well as others.

I filed powers of attorneys with the Interstate Commerce Commission to Mr. Frazer, Mr. Cameron, Mr. Tucker, Mr. Becker and Mr. Leland, who issued the tariffs above enumerated.

We have filed concurrences in the tariffs of all roads which deliver to industries on our lines. I have prepared a statement giving references to the tariffs of the different railroad companies which make deliveries to points upon our lines, showing provisions as to absorbing charges. It was introduced as Exhibit 74.

Under tariffs shown by that list, the railroads absorb the charges and pay the amount thereof to the Manufacturers Railway, and that continued up to March 1, 1910. (These tariffs show that charges were absorbed as to all commodities except coal origi-
269 nating west of the Indiana-Illinois state line, as to which there is a joint tariff as above shown, sand, grain, hay, or ice.)

After the notice of December 31, 1909, from the different roads that they intended to cancel these tariffs on March 1st, I had negotiations with the different roads by letter. All that correspondence is included in the files of correspondence submitted here during Mr. Moore's testimony. (Exhibits 44 to 60.)

During February, I had talks with representatives of some of these roads with reference to restoring tariffs as they were at that time and not making the cancellations effective. I talked with Mr. Haile, of the M. K. & T.; Mr. Rowe of the Illinois Central; Mr. Hart of the B. & O. Southwestern and Mr. Davis of the Vandalia.

"Mr. Cassoday: Now, what, if anything, did they say to you about their willingness to accept these tariffs in case the Commission found it was proper to make such tariffs with you?

Mr. Muehlberg: They stated to me they were perfectly willing

to abide by any decision to be made by the Interstate Commerce Commission.

Mr. Cassoday: Did they say anything as to their willingness as to when the action of the Commission should become effective?

Mr. Muehlberg: They were agreeable to having the charges made, retroactive.

Mr. Cassoday: As of what date?

Mr. Muehlberg: Effective March 1, 1910."

The switching charges of the Manufacturers Railway are in some instances slightly less than those of the other roads in St. Louis. In other instances, the charges of these switching lines are in excess of the Manufacturers Railway's charges. The switching charges within the switching limits are double and more than double the
270 maximum charge provided for by the Manufacturers Railway Company. I have made up a statement reciting a few cases, showing comparative switching charges.

This was introduced as Exhibit 75, and shows that the Missouri Pacific and St. Louis and San Franicsco receive two cents per hundred pounds, minimum $6 per car, on all competitive traffic, as against the Manufacturers Railway Company charges of $4 and $5.50 per car.

I have made a statement showing the comparison of charges where the commodity is moved to the Manufacturers Railway through the Wiggins Ferry Company and through the Iron Mountain. This is Exhibit 76.

This shows that practically all of the defendants named paid the Manufacturers Railway Company $5.50 per car and on the same traffic paid the St. Louis Transfer Railway Company and the Wiggins Ferry two cents per hundred pounds, minimum $5 per car, on deliveries direct from the St. Louis Transfer to the Manufacturers Railway and on deliveries from the St. Louis Transfer Railway to the Iron Mountain for industries located on its lines they paid the Iron Mountain one-half cent per hundred pounds; minimum $3 per car, and the St. Louis Transfer Railway Company two cents per hundred pounds; minimum $5 per car.

I have a list of the concurrences as given us by the Chief of the Bureau of the Commission (Exhibit 77). There were four concurrences filed since that time.

271 Exhibit No. 78 is the switching tariff established by the Railroad & Warehouse Commission of the State of Missouri, effective March 1, 1904, and still effective. The Iron Mountain road receives charges fixed by that tariff and those rates are higher than those assessed by the Manufacturers Railroad Company.

I have a statement of the comparative switching of all lines in connection with the Manufacturers Railway Company through the St. Louis Transfer Railway Company connection and also the St. Louis, Iron Mountain and Southern connection. (Exhibit No. 79.)

Cross-examination by Mr. Jeffery:

The only joint tariffs in which we are named as a participating carrier in a joint rate, are I. C. C. No. D-32, which is freight tariff

No. 100-B, rates on bituminous coal in carloads and the salt tariff, No. 95-A, I. C. C. No. 164, issued by J. F. Tucker, Agent.

What we get under the other tariffs a traffic man would call a "switching allowance, absorbed."

The Iron Mountain switching tariff (Exhibit No. 78) shows your number 966 and 966-A; I. C. C. No. A-622 and A-1024 show that you get the switching rates prescribed by the Railroad & Warehouse Commission tariff in many cases.

We have the uniform bill of lading, but we have none with Manufacturers Railway Company at the top. We issue a bill of lading. Any document which you style either a bill of lading or a shipping ticket, presented to us we exchange it and issue our receipt
272 which I call a bill of lading. I call a bill of lading any kind of a document serving as a shipping ticket or a bill of lading with the receipt of the Manufacturers Railway Company thereon.

Cross-examination by Mr. Stone:

We will put in evidence Manufacturers Railway tariffs No. 1 to 7, inclusive.

As traffic manager for Anheuser-Busch Brewery I perform all the duties required of a traffic manager of all large shipping concerns. I have nothing to do with supplying the cars for shipments over the lines of the Manufacturers Railway Company. When the Anheuser-Busch Company makes a shipment the bill of lading is made out by the shipping clerk of the brewery. The brewery has its own bill of lading with its name on it and the blank for the road over which the shipment is to be routed. It is the uniform bill of lading. The shipping clerk of the brewery makes out the bill of lading, fills in the contents of the car, and sends the bill of lading to the Manufacturers Railway Company's office. The railway company receives the bill and stamps it as any other railroad agent will do.

"Mr. Stone: When does the railroad agent sign it for his company?

Mr. Muehlberg: We don't know of any other agent than the Manufacturers Railway Company agent."

Cross-examination by Mr. Butterfield:

The second paragraph of the general instructions on page 5 of our tariff, I. C. C. No. 7, reading: "Rates named herein are sub-
273 ject to the rules of the general demurrage and storage bureau," is enforced.

When the Manufacturers Railway handled the shipment represented by Exhibit No. 68 (consignee, Shoell, Fryer Company, dated April 18, 1910), containing mixed carload of bottled beer, eight boxes of advertising, two crates of signs, three cases of pictures, one bundle of openers, etc., I understand that the Manufacturers Railway Company did not handle that car as L. C. L. business, but did handle it as a single carload, even though under the classifications a part of the contents of the car would be billed at less than carload rates. I think there is a warehouse on our road down on

Broadway between Pestalozzi and Arsenal. The house is in a depression extending east from Broadway and between Pestalozzi and Arsenal.

Cross-examination by Mr. Wood:

I am not traffic manager for any other concern besides Anheuser-Busch Brewery and the Manufacturers Railway Company, nor do I have anything to do with the traffic of the Busch Glass Works or any of the other industries with which either Mr. Busch or other officers of the Anheuser-Busch Brewing Association are connected. No other traffic except that of the Anheuser-Busch Brewing Association is routed from its office. I have never been called upon to see any railroad companies by the Busch Glass Works concerning rate adjustments on their products or materials; nor to take up with the railroad companies any matter pertaining to the business of any concerns except the Anheuser-Busch Brewing Association
274 and the Manufacturers Railway Company. I am secretary of the St. Louis Refrigerator Car Company; I don't know how many cars it has; its records will show. I can have a statement prepared and introduced showing the number of refrigerator cars the company has. I would say the larger proportion of its cars are used in that traffic, perhaps seventy-five per cent. The St. Louis Refrigerator Car company collects mileage from the various railroad companies that use these cars. I don't know what proportion of the mileage collections are represented by shipments made by Anheuser-Busch Brewing Association. I can file a statement if the records of the office show those facts. I am not an officer of any other commercial concern aside from Anheuser-Busch Brewery and the St. Louis Refrigerator and Manufacturers Railway Company, nor am I a stockholder of any concern whose business may be handled by the Manufacturers Railway Company.

Cross-examination by Mr. Stone:

I don't know how many cars of the St. Louis Refrigerator Car Company have on them "Anheuser-Busch." All of the cars of the Refrigerator Car Company are refrigerator cars. I don't know the number; I think it has three flat cars.

I have been ten years with the Manufacturers Railway and about twenty-three years with Anheuser-Busch Brewery; I saw the Manufacturers Railway grow from a very small concern, with a little spur track, to what it is now. It has been growing all the time.

Prior to the building of the viaduct, the Anheuser-Busch
275 Brewing Association shipped its product through the Iron Mountain connection of the Manufacturers Railway. Connection with the Wiggins Ferry prior to that time was entirely over the Iron Mountain. The viaduct was completed some time in January, 1909, I think.

G. F. Moore, recalled.

I wish to correct the statement I made yesterday concerning the bills of lading. I find that our agent presented to me a form to be

used for the Manufacturers Railway, and asked whether we should have it printed. He said about ninety-five per cent. and probably more of our business was conducted by the use of shipping tickets, and that for the outside business, where we could substitute Manufacturers Railway form bills of lading, the railroads seemed to prefer the use of their own bills of lading with our receipt on them, and have furnished him a supply of them. But in some cases the railroads filled out the bills of lading on their blanks and brought them down to be receipted, that being the preference of the railroads, and so much of our business being done under shipping tickets, he said he never had printed the form which he presented to me for my approval. He presented that form to me some time after the middle of May. I now produce bills of lading of which I have spoken, prepared by the railroad, and brought to our agent for his receipt. There are three Wabash bills of lading, constituting Exhibit No. 80.

276 Cross-examination by Mr. Jeffery:

The dray tickets and receipts now handed me, Defendants' Exhibit No. 3, are documents used as bills of lading by the Manufacturers Railway Company. The paper headed, "Uniform bill of lading," etc., which Mr. Jeffery hands me is the form used by the Anheuser-Busch Brewing Association. They can take up a bill of lading on it. When necessary, it is exchanged for a bill of lading. It is neither negotiable nor bankable. The paper which is spoken of is Defendants' Exhibit No. 4.

Cross-examination by Mr. Butterfield:

Exhibit No. 80 is a duplicate of the original bill of lading as rendered to the shipper. This is our office duplicate. The original was rendered to the shipper. The transaction by which the railroad prepared Exhibit 80 is quite an exception to the custom. All that I have testified about Exhibit 80 is what our agent told me. Exhibit No. 66 being a bill of lading of the Big Four Railroad Company issued to the Anheuser-Busch Brewing Association, and bearing a stamp, "Manufacturers Railway Company, original," etc., dated March 28, 1910, is the original document. I claim that we executed that bill of lading. The blank is not our form. But the Big Four accepts our signatures as their representative the same as they do with the Wiggins Ferry. They accept the bill of lading, that is, they perform the duties imposed by it. I have no knowledge of any claims ever having been presented to the Manufacturers Railway Company by the Anheuser-Busch Brewing Association
277 for loss and damage. They must have had claims for loss and damage. I understand that the Manufacturers Railway Company upon this Big Four bill of lading is liable for loss and damage clear through to destination, as a participating carrier. We have participated in settlement of claims against our road and connecting lines have asked us to join in the settlement of claims. The shortest route by which a car would be moved from the rice ware-

house to the brew house at Ninth street, of the Anheuser-Busch Brewing Association, would be on the Pestalozzi street line, between three and four city blocks. It would go through what we call the Horn yard, down under the viaduct. That would be an additional movement. The movement complete from the rice warehouse to the brew house would be about seven blocks, I think. It would move the whole length of the Pestalozzi street track. That movement would be necessary to transport a car of rice from the rice warehouse to the brew house, and that is one typical case of an internal switch movement for the Brewing Association. We have a connection with the private track of the St. Louis Cooperage Company by using a part of the Iron Mountain, under our contract. The movement of a car from the St. Louis Cooperage Company to the Stecher Cooperage Company would be just a similar movement with the one just spoken of. If a car should be loaded at the brew house for outbound movement, by way of the Wiggins Ferry, it would involve the movement of the car from the brew house near the west end of the Pestalozzi Street track, down to the foot of the viaduct, and over the viaduct to the connection on the levee
278 with the Wiggins Ferry. That would be a longer and a more difficult move than the movement of the car from the rice warehouse to the brew house. If we delivered the car to the Iron Mountain, it would be an easier movement than the one mentioned—and as compared to either of the others, the movement itself would be less expensive. Under our tariff in force February 28, our charge for the movement from the rice warehouse to the brew house would be one dollar. On the movement from St. Louis Cooperage Company to the Stecher Cooperage Company, the charge would be two dollars; and for the movement from the brew house to the Iron Mountain connection, it would be $5.50 per car. The least expensive operation for the movement itself is the latter. The first, for which the charge is one dollar, is not the most expensive, but it is equivalent to the St. Louis Cooperage movement. The second illustration for which the charge was two dollars is not less than at cost. The average two dollar movements are at less than the cost. That particular movement would be accomplished for two dollars. The average movement is at less than cost, and the reason we limit it to two dollars is because the ordinance requires us to do so. I said the charge fixed by the ordinance was inadequate on average movements of the class to which it belongs. The illustration you gave me by Example No. 2 was one illustration of that class, but not a fair average illustration. You have picked out one of the easiest two dollar movements to illustrate the average. It is not an average movement. The aggregate earnings per car, handling basis, on the
279 $2 charges, $1 charges, $3.50, $4 and $5.50, at the present time offer a fair return for our service, all of them taken together; but, each has a certain relation one to the other. If it were not that we received $5.50 on some, we could not accept at a reasonable remuneration $3.50 on others, and $2 on others. If the $1 internal switching charge was the only basis of revenue, and the only service performed, it certainly would not pay operating

expenses. It is always rendered in connection with a service for which we have already received a remuneration to the first point or a service on which we are to receive an after remuneration from the point where we leave the car, after performing the $1 movement, to some connecting line or other switch movement. It is a part of the revenue derived on that car,—a secondary revenue. We may lose money on that $1 movement the same as we do on the average $2 movement. On the average $1 movement, it is about an even break. The average $2 movement is a loss. Our charge by our tariff on February 28 for the movement of the car from the brew house to the Iron Mountain switch was $5.50. That was a part of the movement for which we charged $5.50. The rest of the service was the placing of the empties, picking them out of the yard for use, setting them, taking them up and a complete movement. In the case of the car of rice, the movement to the rice warehouse would bring $4, and the secondary movement from the rice house to the brew house would bring us $1—that is, if the car to the rice warehouse came in from the outside. I want to say that the movement from the rice house to the brew house does not represent a fair inter-work movement. In the Exhibit in which is given
280 the figure $4.34 per car as the average cost of handling, I got it by dividing the total expense by the number of cars handled for a corresponding period.

The Manufacturers Railway Company owes about $790,000, paying 5 per cent. interest. We have lease charges of about $28,000 a year, taxes exceeding $10,000. I think the total fixed charges amounted to $81,924. The operating expenses are about $9,000 a month. We average about thirty section men, receiving twenty-one cents an hour, about $55 per month. We have six engine crews, twelve men, averaging about $100 a man. We have six crews for four engines, and about sixteen train men, averaging about $110 per month. The salary roll amounts to about $1800 a month. We figure locomotive maintenance at more than $1,000 a year per locomotive. Our work is very hard on locomotive power—I think harder than a trunk line would be. Our mileage basis on switch engines is about eight miles a day. I think on our large engines the average for maintenance is $1800 a year each. I will admit that is high. We also have coal heavers and roundhouse men. We have agents and agent's clerk, stenographers, yard clerks, yardmaster, section bosses, and section foremen. The figures on our statement signed by Mr. Degler, are taken from the books. The revenue shown there represents our entire revenue, including internal movements. I will have a statement made showing the internal switching during that same year, and the aggregate revenue derived from it and the number of cars handled at $1 per car.

281 (This statement has been filed, but not marked as an exhibit. This statement covers the inter-work switching from April 30, 1909, to May 1st, 1910, showing the number of carloads moving between points in the same industry; that no inter-work switching was performed for any other patron than the Anheuser-Busch Brewing Association, and the Adolphus Busch Glass Works;

and shows the total carloads so handled for that period was 10,180,—the revenue being $1 per car, of which the average number of movements per month for Anheuser-Busch Brewing Association was 771, and for Adolphus Busch Glass Works was 78.)

Cross-examination by Mr. Wood:

Assuming that we placed upon a track adjacent to a loading platform a string of twenty cars that were available for loading, and were loaded, and then the string was pushed forward by an engine, so that the next cars might be loaded,—I would not regard that placing of the cars, five at a time, as an internal movement, nor charge the Anheuser-Busch Brewing Association nor anybody else for it. If we placed an empty car at some loading platform at the request of the Brewing Association, and after the car had been placed there, the Brewery changes its plans and wants to load the car at some other point, and they then request us to move the car from the first point at which it was placed to the point at which it is desired to load,—I regard that as an inter-work movement and charge $1 for it. In the ordinary course of business, there will be very little inter-work switching except for the Anheuser-Busch Brewing Associ-
282 ation. If it should be considered desirable to ice a car for out-bound movement before it is loaded with beer, and that car was taken and placed at the ice house, and ice put into the car, and then moved over to the loading platform and loaded with beer,—I would regard that as an inter-work switching. As the President of the Manufacturers Railway Company, I have taken occasion to see whether it was getting the charges to which it was entitled from interwork movement, and I know in a general way the character of the inter-work movements. We assess demurrage. The Manufacturers Railway Company assesses no demurrage against the St. Louis Refrigerator Car Company on those cars stored and kept on the tracks of the Manufacturers Railway Company when they are not engaged in road haul. The St. Louis Refrigerator Car Company does not own the tracks on which those cars are stored. They are our home cars. Arrangements have been made with the St. Louis Refrigerator Car Company under which we consider them our home cars. We have absolute authority as to their use. We set them to whoever requires them, just the same as if they were branded, "Manufacturers Railway Company." I use those cars whenever I need to. When a shipment is to be made from a plant on the line of the Manufacturers Railway Company to some trunk line out of St. Louis as the main line carrier, it depends upon what the movement is, or what road and whether or not we have available suitable equipment for it. I would prefer to use one of the St. Louis Refrigerator Car Com-
pany's cars if there is a sufficient number of them in the
283 yard. These refrigerator cars have no end boxes. The construction of them is different from the ordinary refrigerator cars. They are what are commonly known as "beer cars" designed primarily for the transportation of beer. All of the breweries on our line need that special kind of equipment. There are the American

Brewery, Independent Breweries, and the Anheuser-Busch Brewing Companies. Those cars are suitable for other classes of freight than beer. The refrigerator cars are used chiefly for beer. They were built and bought and are used primarily for the beer shipments of the Anheuser-Busch Brewing Association. The percentage of the out-bound carload shipments handled by the Manufacturers Railway Company in the refrigerator cars of the St. Louis Refrigerator Car Company for the year ending May 1st, 1910, and which came from breweries other than the Anheuser-Busch, is small.

"Mr. Wood: Just what is the arrangement under which you have the disposition of these cars?

Mr. Moore: We have so many of them coming and going that we have never as yet encountered any difficulty in supplying them to whoever wished them and whenever they wished them."

We have merely an oral agreement with the Refrigerator Car Company, under which we distribute the cars. The understanding is that they are to be primarily used for the shipments of the Anheuser-Busch Brewing Association. When they are used for other purposes the Manufacturers Railway Company gets no revenue out of the cars except our switching revenue. We have no investment in the cars, but the owners of the cars collect mileage.

284 We do not pay it, but the trunk lines do. That is a part of the agreement. We pay them no mileage, and they pay us nothing for the use of our storage tracks. I do not know the number of days each year which represent the time while these cars remain in our yards. The yard which we call the "River Yard" is that in which the cars coming from connecting lines are brought, broken up, and distributed. The yard was also built in part for the purpose of furnishing an incline to the river for car floats. The principal part of the yard is used for storage. I think the trackage in that yard is about 10,000 lineal feet. There are eleven tracks about three to five blocks long. The storage capacity is about 400 or 500 cars, —that is of the whole yard, taking into account its other ordinary uses. We use that yard in part for storage of cars of the St. Louis Refrigerator Car Company. Some of them are stored elsewhere. Most of them in the River Yard. It is a fact that most of the large concerns like packing companies and breweries that have occasion to handle their product out under refrigeration, do so through the medium of some car or transportation company which buys those cars primarily for that purpose. I do not regard that the storage facility for these cars when not in use is a thing of any special value to the Anheuser-Busch Brewery. It is of considerable value to the railroad, and very convenient to them. They depend on me to furnish them cars. I serve them largely by furnishing St. Louis Refrigerator Car Company cars, and it is an important facility to them. I do not know under what conditions the packing companies are furnished storage for cars. I testified that the $800,000

285 total investment of the Manufacturers Railway Company, included $352,000 expended for the purchase of the city limits right of way. To the extent of five per cent. interest on that $350,000, the fixed charges represent a charge on property which is

not now devoted to the transportation of cars from which the revenue shown on the statement accrued. I do not include in the operating expenses any charges in connection with the further development of our plans. That comes in the construction account. The fixed charges upon that proportion of our property which is used in the service of the Anheuser-Busch Brewing Association, is about $30,000 a year. That includes the leased property and a part of the River Yard. If we did only the business of the Anheuser-Busch Brewing Association, we could handle it with two good working engines and one in reserve. We have four. If I had only outside industries to serve, I would have to have two engines. There has been no change in the bill of lading method of handling our shipments since March 1, 1910.

Cross-examination by Mr. Stone:

The street boundaries of the property which includes the plant of the Anheuser-Busch Association are First street on the east, between Dorcas and Arsenal, running up Dorcas to Ninth, then northwest until you almost reach Lynch street, up to Thirteenth; Pestalozzi street from First street up Pestalozzi street to a point about half way between Ninth street and the next street west; on
286 West Thirteenth street a half a block west of Ninth street. I have been giving the tracks that serve the brewery. The boundaries of the brewery plant are: First street on the east, Dorcas on the north, up to Thirteenth street, between Dorcas and Lynch on the north, and from Thirteenth street southwardly to Pestalozzi street on Thirteenth, and from about one block west of Ninth street, and down to Arsenal street, then east to Broadway, then they have stables and one thing or another, I don't know just how far they go, and from Arsenal street down to the river. The area is approximately one hundred and twenty-six acres. On it are erected various buildings connected with the manufacture of beer. I have no map in evidence showing the tracks of the Manufacturers Railway Company on one color, and those of the Iron Mountain and the Wiggins Ferry in other colors. Outside of the lease of December 31, 1908, and outside of the streets and outside of the lease of the river property, there is none of our track on property owned in fee by the Manufacturers Railway Company. In addition to the lease of December 31, there is a lease for the wharf near the river yard, extending from Arsenal street to Lesperence street. I made a mistake, however. We own the property east of the Arsenal on which there are two parallel tracks running from Utah to Arsenal street, and we have a lease for a triangular piece of ground at Second, Rutger and Merchant streets, and the trackage on the streets is practically in the nature of a lease. There are about two and one-quarter miles on Second street, over three miles in the river tracks, also the track covered by lease from the Brewing Association,
287 the track on Dorcas street, Pestalozzi street, the City tracks and switches. There is some railroad constructed on property owned by Adolphus Busch. I have ordered an absolutely

accurate measurement of it. We pay as rental $4,000 per annum to the city for the river front, and I think $400 per annum for the small triangle, and $5,000 to the city for Second street,—according to the ordinance. The track on Second street is a single track. Our office is two blocks from the office of the Brewing Association. We have constructed about nine hundred feet of the line which is marked yellow on Exhibit No. 25. No part of the tunnel shown by a green line on the same exhibit was constructed nor have we any ordinance authorizing us to construct it. It is merely projected. We have some right of way that is in the line of it. The distance of the line from Utah street to the city limits is about six miles. Ordinance No. 22,996, approved April 1st, 1907, was accepted by the Manufacturers Railway Company. As far as I know, it has made no effort since April 1st, 1907, to have its charges for switching service and moving cars increased by ordinance.

"Mr. Stone: Now, please explain how it came about that the rate on outbound carloads from the Manufacturers Railway Lines in the City of St. Louis, and the connection of the Wiggins Ferry line or the St. Louis Transfer Company's tracks, was increased to $5.50 per car as shown in the tariffs of your company.

Mr. Moore: Prior to the connection with the St. Louis Transfer Railway Company, while the St. Louis, Iron Mountain & Southern were operating the Manufacturers Railway Company, the service which up to March 1st, was covered by $5.50, cost the
288 line other than the St. Louis, Iron Mountain & Southern and Missouri Pacific, $6.50, the Iron Mountain doing the work and charging $3.50 for the Manufacturers Railway, and $3 for any other service, and that was the same as the Wiggins Ferry charge as it now exists. So, instead of increasing, it was decreased $1.00.

Mr. Stone: Doesn't the ordinance prescribe for a minimum charge, that the minimum charge shall not exceed $4?

Mr. Moore: I don't so construe it.

Mr. Stone: Don't you charge $5.50 for outgoing loaded cars over the line of your company to the connection with the St. Louis, Iron Mountain & Southern Railway?

Mr. Moore: They have had such a tariff in instances, yes, sir.

Mr. Stone: How does that come about, when the ordinance prescribes for your service $4?

Mr. Moore: I don't understand that the ordinance has in view any divisions of the St. Louis rate that we enjoy or has to do with our connections. It has in view inter-city switching, but no charge for movement to be made in excess of the St. Louis rate."

We have followed the ordinance according to our interpretation, in fixing the rates set forth in our filed tariffs. Under our tariff No. 7, cars loaded with beer packages returning or in-bound, were charged $3.50, and outbound freight $5.50. Other freight in-bound was charged $4.00 per carload.

"Mr. Stone: How did it happen that there was a preference given to empty beer kegs of 50 cents per carload?

Mr. Moore: You will have to ask your Traffic Association. That

is all we could get. That rate was the allowance, and we could not force them to allow us anything, and they made us this allowance."

289 The Central Freight Association and its subsidiary branches adopted those rates. We could not have made them effective without them. We got just as much as we could get on everything. It is not how much we charged, but how much these connecting lines would allow us on those rates. They wanted to cut down the $3.50 per car on beer packages returned. We were pleased to keep it at $3.50.

Mr. Stone: And then they got a preference of 50 cents over everybody else on loaded freight coming in?

Mr. Moore: No, Colonel, I don't think you have the right understanding of the tariff. That is the absorption that the road paid us.

Mr. Stone: I am thinking about the absorption.

Mr. Moore: They didn't do it to distinguish in favor of the Anheuser-Busch Brewing Association, but they did it to enhance their own revenue by not paying us any more than they felt like they had to on that class of business."

When the defendant railroad companies do not absorb these rates as set forth in our filed tariff, then we get $2 from the shipper or consignee. The $2 charge is collected by us when the carrying line has excepted that particular commodity in their tariffs by refusing to absorb the rate. I will file a statement to show what my statement of fixed charges is based on. (This statement was filed, not marked as an exhibit.) The rental on these tracks is included in the fixed charges.

I said the total value of the property of the Manufacturers Railway Company devoted to railroad purposes and including the value of the leased lines is about a million and a half dollars. That includes the $350,000.00 worth of property not yet employed in railroad service. I will furnish a statement showing what en-

290 ters into that value. (This statement was filed later, not marked as an exhibit.) My statement does not include the depreciation, the amount of which has not been determined. The operating expense figured does not include taxes; and the tax figure given does not include any taxes on the $352,000 of property. The $10,000 tax is based wholly on the valuation of the railway property as made by the Missouri Equalization Board. In the leased property, the owners pay the taxes. We do not pay on the property leased from the Brewing Association.

I believe the Iron Mountain's switching charges on outbound and inbound carload freight, between the Wiggins Ferry Company and the Manufacturers Railway Company, is a level charge of $3. I do not know how long that has been the charge, but it has been since I have been connected with the road.

In connection with my correspondence with W. F. Allen, Secretary of American Railway Association, I answered certain interrogatories. One of them was whether our company was performing a general freight business, and the nature of our general business. I answered that we were performing a switching and terminal busi-

ness, class "one," and reported as such. I also answered that we operated two and one-half miles of standard gauge main track, exclusive of sidings, and four locomotives. Those answers were correct. Also that we operated St. Louis Regrigerator Car Company's equipment as home cars, total number 1260, being 1253 refrigerators, four boxes, and three flat cars. That is correct as near
291 as I can remember. I do not know whether the number has changed, nor how many of these cars have, on the outside, in large letters "Anheuser-Busch Brewing Association." The Manufacturers' Railway Company pays no rental or hire for that equipment. I suppose the car company derives its revenue from a mileage basis from the roads using the cars. I have no access to their records. Most of these cars are loaded by the Anheuser-Busch Brewery. Their own people load them. The outbound cars for other industries are loaded by the industries themselves. We do not load them. I also answered the Allen interrogatory number eight, asking with what railroads our company connects, by saying "with the St. Louis, Iron Mountain & Southern and Terminal Railroad Association." That was true then and is now. I answered question ten, as to the point where we have warehouses or team tracks for the convenience of the general public by referring to blue print attached to my answer. I think I attached a blue print like our Exhibit 25. It shows no warehouse, and so far as I know we have none. I mean we have no freight house for the general public. I answered the Allen interrogatory fourteen, asking if we issue tariffs and whether joint or only local, by saying we did and that we concurred in tariffs to other lines. We issue switching tariffs. I received Mr. Allen's letter of March 25, in which he said that the committee requested him to state that in its opinion, under the requirements of the Association, the Manufacturers Railway was not eligible. In our statement filed as an exhibit, rent was not included in the operating expenses. We get no inter-work switching
292 from the Purina Mills. They are on our line and probably pay us some $2.00 switching for local service. Most of their business has been absorbed. Their business is purely forwarded business and when not local to points like East St. Louis, where they are not absorbed, their switching is absorbed by our absorption tariffs. I am now collecting $2.00 for switching outbound and inbound carloads.

"Mr. Stone: What is the reason that you or your traffic manager establish different rates per car on outbound and inbound freight as against the shippers or consignees, as distinguished from the rates charged to the railroad companies or absorbed or paid by the railroad companies made defendants in this proceeding. How do you distinguish between them, is what I want to get at?"

"Mr. Moore: The way I look at that, Col. Stone, is, the railroad makes those rates for us. We ask them to allow us a certain figure. They accept it. They make it effective by the absorption tariffs. We would like to have more on some of that business, maybe, but we cannot get it."

I know that the railroad companies are no longer willing to ab-

sorb the rates fixed in our tariffs, and I am asking the Commission to pass upon the merits of this whole case.

"Mr. Stone: You are asking the Commission to establish this rate for you, and give it to your company. I want to know on what principle, what foundation you have in reason to ask the Commission to compel the railroads to collect that $5.50 per car for your company, when you are not asking and have not fixed rates exceeding $2, as against everybody else. Can you give any good reason for it?

"Mr. Moore: Yes.

Mr. Stone: Well, let us have it.

293 Mr. Moore. We have to operate our properties so as to cover operating charges, fixed expenses, so as to earn a reasonable return on our investment. We are not permitted, any more than a larger common carrier, to single out the most profitable business and base all our earnings on that. We have to take the fat and the lean, as they come to us. Our $2 switching represents about what some of your grain and cotton movements represent to the L. & N.—pretty lean business. If you didn't have better business, you could not exist. So it is with our $2. If we can not perform service that is worth more than $2 to somebody else, we could not operate our railroad. Our heaviest has been worth $5.50 on that outbound business, because it saves your individual road $1.00 a car on every car we gave you, to what you had been paying heretofore; it saved you that $1; it was worth it to you or you would not have given it and thereby lay yourself liable to infringement of the Federal law.

Mr. Stone. Well, take the old charge, before the viaduct was built,—$3.50 to the railroad companies. How did you justify that which was 75 per cent. more than the $2 rate against the industries or the shippers or consignees.

"Mr. Moore. You must call on the Iron Mountain to justify that, I think. * * * They made it for us; * * * they were operating the road then."

I began to adjust matters just as soon as I could in the ordinary course of business, inheriting from them this $1 inter-work switching and some other switching charges which we tried to have changed, and some of them we did get changed; in other words, we were trying to progress in our business as fast as we could and as honestly as we could.

"Mr. Stone. How do you escape the charge that it is an unjust preference in favor of the industries and shippers or consignees outside of the railroad companies, where you charge them

294 more than double the amount that you charge private parties.

"Mr. Moore. Any railroad company in St. Louis could have refused to have adopted our basing tariff. It was purely their consent that made it operative.

"Mr. Stone. But they are not consenting any longer. They have waked up in the matter, and they are not going to take it unless they have to. I want to know why it is you insist upon the railroad

companies paying you more than double the rate for the same service that you insist upon private parties paying you?

"Mr. Moore. The whole matter is to be considered together, Col. Stone. We are performing for the railway company a greater service than we perform for the individual consignee that pays us the $2, and that greater service consists in getting the shipment into the car, in sealing it, in carding it, in delivering it to our connection in bunches and trainloads, setting the car on our tracks for load, handling the empty, handling the load, sealing, carding,—more than we do for a private individual, and it is done without the railroad on the East side, a road not directly intermediate with us, having anything to do with the handling of that, in a clerical way or anything else until it is ready for their billing."

Taking the matter as a whole, I think the service is greater to the defendant railroad companies, which we perform for $5.50, than the service which we perform for Anheuser-Busch and for which we charge $2. I testified that the service afforded by our viaduct was not essential for the service of Anheuser-Busch Brewing Association. They could have done without it. It was built when we commenced competing in territory which previously had been completely dominated by the Iron Mountain, and in order to have connection opened with all roads, we had to get connection with
295 some other road than the Iron Mountain, and by reaching the St. Louis Transfer Railroad Company, we got that connection, and the Iron Mountain would not allow us to cross at grade, therefore, we had to cross by viaduct. It was completed about January, 1909, at a cost of approximately $287,000, as near as I can figure it.

I think I testified that about ten per cent. of the value of the Manufacturers Railway Company, as shown in our cost of the road, was devoted wholly to the service of the brewery, and the other ninety per cent. was for the purpose of competing, and establishing our traffic with the general public of St. Louis. By the ten per cent. I mean that would represent the proportionate cost of the physical property so used.

In my statement, entitled "Industrial Report," showing the number of carloads forwarded, etc., (Exhibit 41,) I think the Dried Brewers' Grain shipments were included in the Anheuser-Busch business. I mean in my tonnage statement. In Exhibit 41, it is shown separately.

None of the coal that we handled for the Schroeter Coal Company belonged or was sold to the Anheuser-Busch Brewery. They sell their coal by wagon from the yard, and do not sell to the Manufacturers Railway. The Brewing Association gets its coal from the Consolidated Coal Company. It is handled by the Manufacturers Railway Company, and is included in the cars received by it as shown by my statement.

The lease, dated December 31, 1908 (Exhibit 22), was
296 executed some time between the first of September, 1909, and the first of January, 1910. Up to that time, the lease was practically in abeyance in its exact terms, and the agreement,

as near as I can describe it, was to look the matter over carefully and take plenty of time to make up your mind what was right, and we operated the tracks under oral license until such a time as it could be satisfactorily adjusted between the contracting parties, and the terms then agreed upon governed from the date of the lease, December 31, 1908. The lease was dated as of the date it became effective, which was about eight months prior to the signing of the lease. When I came here, the matter of the lease was pending. As to the rent, $2,000 a month, I agreed that it was a fair rental. I did not fix it. So far as I know the rental had not been fixed until I became president of the company.

The interested parties, Mr. Busch, attorneys and myself were represented in fixing the valve of the property as the basis of the rental.

I now produce a blue print as promised, being the blue print referred to in the lease, Exhibit 22. I have no copy of it, but will have one made for an exhibit. This blue print has been filed as an exhibit. The red lines on the blue print show the territory embracing certain tracks, included in the lease. The map was to locate the amount or area of ground leased, rather than individual lines. It shows in lines almost wholly the tracks belonging to the Manufacturers Railway, rather than the switches belonging to the Brewery. It does not show all the tracks of the Manufacturers
297 Railway running east and west, but the tracks shown here are tracks belonging to the Manufacturers Railway, and owned by it in most cases. The red lines indicate property that I considered necessary to be purchased by the Manufacturers Railway in order that it might hold in fee the property necessary to reach the switches and sidings owned by the Anheuser-Busch Brewery. We have not purchased it. The lines leased from the Brewing Association are not indicated on that blue print to any considerable extent, i. e., the blue print does not show, in detail the sidings referred to in the lease. To the best of my knowledge, all of the lines shown on that blue print are owned by the Manufacturers Railway and not leased, except some of the tracks near Thirteenth street and Pestalozzi street. The line crossing Broadway, and extending west near Pestalozzi street to the property line of Anheuser-Busch Brewery, on the west line of Ninth street, is the property of the Manufacturers Railway Company, owned by them. The tracks running from Broadway to the east side of Second street are owned by Manufacturers Railway, but the right of way is not. On Dorcas street, from Twelfth down to First street is the line of the Manufacturers Railway, not leased. It is laid in the street, a franchise track. The line starting in Lyon street, indicated in white, running down to First street, across Second, belongs to the Manufacturers Railway. The line starting at the east side of Second, running south to First, south of the line spoken of, belongs to the Manufacturers Railway Company. It is part of the Pestalozzi street line. The line running from tracks of the Iron Mountain, enclosed in red on the
298 blue print, running around toward the river front, represents the viaduct. That blue print shows the territory that the

leased lines occupy, but only a very small number of lines are shown on it.

The map, which you now show me, entitled "Plans showing locations of Industries adjacent to Manufacturers Railway," etc., and attached to it what is called "Analysis of Terminal Facilities in Territory contiguous," etc., I never saw before and have not one like it. It seems to me a very nice map, and is the most condensed illustration which has been brought into the case, showing the Manufacturers Railway, Iron Mountain & Southern and St. Louis Transfer Railway. I will look over the map, will bring it back in the morning, and if I find it all right, I will make it an exhibit.

The blue print which you now show me, purporting to be a statement of loaded cars forwarded and received via Manufacturers Railway, from February 1, 1909, to December 1, 1909, I do not recognize. I had a statement prepared for that period, but do not know whether this is a copy of it or not. The statement which I had prepared was found to be in some instances not absolutely accurate. I have since employed a statistician, who has worked over the figures, and I believe they are now accurate. If the statement you show me was made up in our office, or under my supervision, the percentages shown on it are approximately accurate.

July is a very heavy month for the shipment of beer. Your statement shows July, 1909, on carload business, 97.2% freight
299 forwarded for Anheuser-Busch. I will let you know in the morning whether your statement is correct.

Defendant's Exhibit 5, which is a printed copy of the bill of complaint, filed in the United States Circuit Court, for the Eastern Division of the Eastern Judicial District of Missouri by the Manufacturers Railway Company et al. vs. St. Louis, Iron Mountain & Southern Railway Company et al., was sworn to by me. In it, from page 20 to 26, is a description of various industries with their location and the transportation facilities of each. To the best of my knowledge they were fairly stated at that time. There may be some inaccuracies. I do not know whether there are or not, but I tried to state them fairly at the time. That bill was dismissed by the court on February 28, 1910, Circuit Judge Adams presiding, because the judge thought he had no power under the law to grant the relief prayed, because the Interstate Commerce Commission had primary and exclusive jurisdiction. He did not pass in any way on the merits of the bill.

Cross-examination by Mr. Jeffery:

I have seen a number of annual reports of railroad companies, and am more or less familiar with what are known as the operating ratios.

Mr. Jeffery: I ask you to refer to your statement of operating expenses and revenue for April, 1909, and ask if you know any other common carrier in the whole world, which has as low an operating ratio as the Manufacturers Railway?

"Mr. Moore: The revenue for April was not the revenue
300 earned in the month of April. It was certain revenues that had not been correctly accounted which I put into April, in order to get them into proper accounts. Our April earnings were considerably less than for the month of April. All things could not be corrected at once."

Even with that, it is a very low percentage on operation, but not the lowest in the world. My remembrance is that the Parrall & Durango Railroad Company in Mexico, where I was auditor, was just about the same. My statement, as to the month of March, 1910, shows a fair indication of what our operaing expenses and operating revenue would have been under the old basis of tariffs.

Cross-examination by Mr. Butterfield:

The blue print which I have been shown, referred to in the lease (Exhibit 22) was completed at the time the lease was executed. It was made by Julius Pitzman, a St. Louis consulting engineer. I said the blue print had a file mark on it. It was turned over to my filing clerk. I do not know his system of filing; I asked him for the Julius Pitzmann blue print, and he brought me this. I see nothing on it to indicate that it was made by him. It was made under my direction some time in the summer or early fall of 1909. I had the red lines put on by Mr. Fasset. I think the red lines were put no some time in November or December. The blue print map was complete with the red lines on it, when the lease was signed.

I told Mr. Fasset the track centers I wanted to maintain and told him what property to include in other parts. The object
301 of the red lines was to show what we would have to own in fee in order that the Railway might own the right of way of the brewery switches. The red line does not have any reference to the lease. Without the red lines, the blue print is the blue print referred to in the lease.

"Mr. Butterfield: Will you please tell us how that map aids at all in the understanding of this lease, it does not show anything that the lease says it does show, does it?

"Mr. Moore: We had in view a lease between the Anheuser-Busch Brewing Association and the Manufacturers Railway Company for certain facilities owned by the Aheuser-Busch Brewing Association, which the Manufacturers Railway Company desired to operate, and the matter went along for about a year before a formal lease was executed satisfactory to both parties. * * * We had such records as would tell us and tell the Anheuser-Busch Association just what was included in the lease. * * *"

Redirect examination by Mr. Cassoday:

Our bill of complaint in the Circuit Court (Defendant's Ex. 5) was prepared in a hurry, questions being asked me to furnish information as to a great many of its allegations. I gave the best information that I had, on the spur of the moment. In the allegations of that bill, on page 27, as to the percentage of business done by

our road on the carload and tonnage basis for persons other than the brewery, I did not at the time figure out definitely the percentages, but gave my estimate and judgment, and I gave what I then thought was correct. The percentages for firms, aside from Anheuser-Busch has changed since that bill was filed in February. Each
302 month it fluctuates. I think there has been an increase of outside business. I employed a man hurriedly to furnish me the result of his statistical labor, as to carloads and tonnage. I asked him to make a statement both ways on one month and those are my figures on what he gave me. When I wanted to introduce evidence, I tried to verify these figures, and found they were not accurate, and employed a statistician of ability to make over all the statements, and I have every reason to believe that his percentages in this case are absolutely correct.

So far as I know it is the custom and practice of the railroads, having terminals in St. Louis to charge $1 per car for inter-work switching. The Iron Mountain's tariffs, I. C. C., No. A. 1024, item No. 50, page 17, section 2, shows such a $1 charge, so also do the Missouri Pacific & Iron Mountain tariff, I. C. C. No. A-622, issued August 10, 1908, effective September 12, 1908, item 14, page 6, section 1, and Wabash local switching and suburban commodity tariff, I. C. C., No. 2233, issued January 8th, 1910, effective March 1, 1910, item 170, page 7. I know of no deviation from that charge as generally made by the roads in St. Louis for such service.

The Manufacturers Railway is compelled by city ordinance to extend its line on the east side of the river or else forfeit franchises, and several of its franchises on this side of the river are dependent upon it.

"Mr. Cassoday: If these cancellations remain effective, what, if anything, in your opinion, will be the effect upon business of the Manufacturers Railway Company?

303 "Mr. Moore: The Manufacturers Railway Company sooner or later will go into bankruptcy.

"Mr. Cassoday: Eliminating the Manufacturers Railway Company and the service rendered by it to industries on the south side of St. Louis, in your opinion, would the railroad service which it is possible to have rendered in that section of the city be adequate for its needs?"

"Mr. Moore: I think it is not adequate for the needs of South St. Louis."

I have had correspondence with the Michigan Central (of the Vanderbilt System) concerning the use of cars of the St. Louis Refrigerator Car Company. That correspondence constitutes Exhibit 81.

Recross-examination by Mr. Jeffery:

By "Inter-work switching," I understand the switching movement of one car after it has been placed to terminate one movement, to another location in the same works or industry. Assuming that Adolphus Busch Glass Works is a separate corporation from the brewery, I consider switching to it as inter-work switching. So also would be

switching to any other corporation controlled by Anheuser-Busch. There are two kinds of inter-work switching; one moving a car after it has reached its destination to another place in the same yard, and the other to move it to one place in an industrial yard, and afterwards move it to another point.

The Manufacturers Railway Company owns no property on the east side in its own name. It does through other people. It has no line or right of way on that side.

304 JOHN J. BAULCH testified:

I am superintendent of the Manufacturers Railway Company; never been connected with the Anheuser-Busch; have been with the Railway about six years, commencing December, 1904. Before that, I was Traffic Manager of the Inter-state Car Transfer Company, which operated between St. Louis and East St. Louis. It operated in connection with the Iron Mountain, the Burlington and the Southern. At that time it had no connection with the Wiggins Ferry. Prior to that service I was General Freight Agent of the Wiggins Ferry Company for about twelve years. Prior to that, for about seventeen years, I was connected with the Terminal Railroad Association. Altogether, that represents a good many years of my life, of experience in the railroad business in the terminals of St. Louis.

I do not know when the Iron Mountain built their line into St. Louis. My first recollection is that it was located on the river front, on the south side of St. Louis. The passenger station was at Main and Gratiot, which is three streets south of Chouteau aenue, about three or four blocks from where the Manufacturers Railway is now. At that time the Iron Mountain passenger trains all ran in over that line. The Iron Mountain went into the Union depot about 1876. Since then they have adopted some other line than the river front to reach the Union depot. Their line along the river front was then their main line of railroad, and I understand it is still. In 1887,

305 when the Manufacturers Railway Company was organized, there was only one industry at that time located in that district in the south side. It was the Missouri Car & Foundry Company's plant, now the American Car & Foundry Company, a large industry. The territory between the river and Broadway, running north and south at that time was in a very hilly part of the city and the lower part of the river front was a dump or slough, not built up to amount to anything. The buildings were little shacks.

The first track built by the Manufacturers Railway was from Ninth street east to the connection with the Iron Mountain, what is now the Pestalozzi street line. When I first took charge of the operation, the Pestalozzi street line had been built, the yard at Ninth street had been built, also the Post Office or Broadway yard, and the Second street yard; also a track into the Dried Grain Company, and a yard east of the ice plant used for storage and icing cars. That was what was there when I went there in December, 1904.

"Mr. Cassoday: Generally speaking, what has been done since that

time, so far as the extension and construction of the line was concerned?

"Mr. Baulch: I think the first work we did was in 1905. We built south from Second and Dorcas street. * * * The river yard had been contemplated, and one or two tracks laid in it and the filling was going on there at that time. In 1905, we built that extension south on Second street, and continued putting in filling in on the river front. * * * Mr. Busch, shortly after, called me into his office one day and told me he was going to make a terminal in South St. Louis; told me he wanted me to get together with Mr. Flad,

* * * a consulting engineer, and to go over the ground care-
306 fully, and select, if possible, a line which could be worked up as a terminal proposition for South St. Louis, in connection with the Manufacturers Railway."

Mr. Flad and I tramped all over South St. Louis, north and south for the purpose of locating a line for the Manufacturers Railway. We did locate one. We picked out a line north to Poplar street on Second, and we selected a route going south over Second street, and winding around through to the city limits. That line was afterwards surveyed. We walked over it four or five times before we finally decided on it.

I understand that franchises were obtained from the city for these extensions after the line was located. Mr. Flad and I did that in the early part of 1905. In 1906, we built from what is known as the Pestalozzi street line around on to Dorcas street, just west of First street, and from Dorcas street to Eleventh street, and built some tracks on Eleventh street, also a yard between Ninth and Eleventh street. Either late in 1906 or early in 1907, we acquired the Arsenal property on which we laid three parallel tracks, about 640 feet long, also a track into the United States Arsenal from our tracks. The three tracks will hold about fifteen to sixteen cars each. The track into the arsenal will hold about fifteen or sixteen cars In 1907 we continued the constructing of the river yard. Mr. Busch seemed to be very anxious at that time to get across the river, either by bridges or car transfer, and I tried to get him to build a tunnel across the river. We kept extending the river yard, and went north to St. George street

with these tracks. I think we had only five at that time. In
307 1907, we built west on Dorcas street to Thirteenth street. That is now in the Dorcas street line, extending to Thirteenth street, and we built a yard at Thirteenth or between Twelfth and Thirteenth. When we first built the Thirteenth street yard it had two tracks; it now has five; three of which would do the work of the brewery. The balance wa used for the general public, if desired. In 1907, we went north on Second street, from Dorcas to Rutger street. a little over a mile. Rutger street is about three blocks from our present north terminus.

We also built the Schroeter Coal Company's yard on Dorcas, Second and DeKalb with three tracks, but with frogs laid for eight tracks, and it is our purpose to build the eight tracks. The three hold about twenty-five or thirty cars. In the latter part of 1907, we started on the viaduct which was completed toward the end

of 1908, or early in 1909. The object of it was to give us an outlet from our Second street line, both north and south, and from the Dorcas and Pestalozzi street lines to our river yard and to a connection with the St. Louis Transfer Railway. While building the viaduct, we went north with our track on the river front to a point about Barton street, and a connection with the St. Louis Transfer Railway.

While we were building the tracks in the Arsenal property and putting in that Telford road, we were building a residence for the Government inside of the Arsenal. It was a substantial two story brick residence. The track was built of eighty-five pound
308 rail, fairly well constructed which passed inspection by the United States Quartermaster; it was about 640 feet long. During 1908, we were reconstructing all of the time. We reconstructed the Second street yard, improved the service and reconstructed the Horn yard, which starts between the Iron Mountain track and the Pestalozzi track and leads around almost parrallel with the Pestalozzi street line. It is just south of the west approach to the viaduct. It holds between forty and fifty cars.

In 1907, we built the Second and Utah street yard. We excavated a vacant lot, and put in a track for a coal yard; it holds eight cars, and the track on the street next to the main track will hold eight more, and on the east side we have a track holding fifteen. The yards at Ninth and Eleventh street- were completed in 1906 and 1907, perhaps a little later. The Eleventh street yard holds fifty cars.

In 1908, we added two tracks to those in the Thirteenth street yard, and what we call a switch-back. In 1908, we remodeled the St. Louis Refrigerator Car Company's yard, and arranged for them to put a shed over it, so we could fix it for car shops. There are six tracks in the DeKalb and Second street yard, holding about 30 cars for repairing. The car shops, as remodeled, hold about 30 cars.

I heard Mr. Moore's testimony as to what has been done since the beginning of 1909, in the matter of construction. I recall nothing additional to what he told. During all of that time we were filling in on the river yard, and are still doing so. The wharf
309 line has been established by the United States Government and indicated by a row of pilings out in the water. We are constantly filling in. The total width of the yard from its west side to the row of piling is about one hundred and fifty feet. We have already filled in about one hundred and thirty or one hundred and thirty-five feet. The level of our filling is about two and one-half feet above any high water mark we have had since I have been down there. The depth of water at high water mark is about fifty-five feet, so we have a very deep and expensive fill. When completely filled, the space will accommodate about fourteen tracks. Ten are completed and the eleventh under construction.

None of our tracks are absolutely for the Anheuser-Busch. Both the Pestalozzi street line and the Dorcas street line are used largely for the brewery.

"Mr. Cassoday: Now, all the other parts of your road, tell us whether the tracks are necessary for the Anheuser-Busch Brewing Association or not?

Mr. Baulch: The yard at Second street is used largely for the loading of the product of the Anheuser-Busch Brewing Association. The Dorcas street yard is not used at all for the Anheuser-Busch Brewing Association. The Anheuser-Busch Brewing Association is not interested at all in anything north or south on the Second street line."

The Post Office yard was used almost entirely for the Brewery to 1907, but now it is not used at all for it.

The Horn yard is used as a making and breaking up yard for the handling of business to the Brewery, and of any other business for any of our customers. Also for storage purposes
310 for anybody. The yard on the outside of the Government reservation is a general storage yard for any storage. The River Yard is used as a general receiving yard for our connections. The Iron Mountain and Wiggins make all of their deliveries in there.

If you eliminate the viaduct, the river yard and our connection with Wiggins, we would have only one railroad connection, i. e., with the Iron Mountain. We have four physical track connections with the Iron Mountain. Three are located at about the end of Arsenal street, one behind the other, and the fourth is located at Park avenue, at the north end of Second street.

"Mr. Jeffery: Is that an actual connection? When?

Mr. Baulch: Yes, always has been since we took over that property. We connected up our rails with it as soon as we could. * * *"

The Manufacturers Railway Company uses the tracks which I have said were not necessary for the service of the Brewery in the general handling of cars for public delivery and delivery to consignees who have tracks of their own. About 1907, we built a track for the Ganahl Lumber Company, near Cherokee street, and we serve them regularly. I think we deliver lumber to them on their track, at Second and Utah streets. I am well acquainted with the railroad situation in the city of St. Louis as a whole. There are three industrial divisions in the city; the "North End" between Biddle street and Baden, Broadway and the river, along the river front. That territory north of Biddle street is from three-quarters of a mile to a mile wide. In it are located the terminals of
311 the Burlington, M., K. & T., Wabash, L. & N. and Clover Leaf. The M., K. & T. occupy what is known as the Pennsylvania holdings. The Missouri Pacific operates a freight station there, so do the C. & A., Frisco and Wabash, also the Terminal with all their lines. There are a great many industries located in that territory, and each road has a set of industries located on their lines. There are practically no industries up there that are not served by one or more of those roads, and there are a great many industries along the line of each of these roads in North St. Louis. I think the railroad facilities in the North End of St. Louis are

adequate for the manufacturing and industrial interests of the north end.

The next district is the "Mill Creek Valley," located west of Seventh street, between Clark and Gratiot street, and Compton avenue. That district runs in an east and west direction, almost through the center of the city. It is about two and a quarter miles long, and is served by the Terminal, Missouri Pacific, Frisco, Rock Island and Wabash. That district of the city is overcrowded with industries and manufacturing establishments. I do not think the railroad facilities for handling their business is quite adequate to the situation, because the valley is so peculiarly constructed that there cannot be very much more additional railroad facilities in there. Each of the roads mentioned has quite extensive facilities through that valley, and serves the industries and manufacturing establish-
312 ments along the valley.

The other district is the "South End" located south of Chouteau avenue, and from Eighteenth street to the river. It is only fairly well built up with industries. There is room in that section of the city for many more industries. The district runs south and southwest nearly to the city limits. I told Mr. Busch a great many times that it was only fit for factories That district is served by the Iron Mountain and the Manufacturers Railway. The Iron Mountain tracks there run right along the river bank, and in that district, from the river west to Eighteenth street there is no other north and south line, except the Manufacturers. The Wiggins Ferry does serve one industry there, the American Car & Foundry, for which they do a fair business. They may have one or two smaller industries, but the Wiggins service is principally in the extreme north end of the south side district, and does not extend south into the district, to any considerable extent, except its service to the American Car & Foundry Company. The principal business done by the Wiggins on the south side is public delivery yards and yards to accommodate business to and from boats and from the Iron Mountain connection, and the Manufacturers Railway connection, i. e., the transfer of traffic, either originating or consigned to points on the Manufacturers Railway or the Iron Mountain, together with a certain amount of public track delivery.

"Mr. Cassoday: In your opinion, is the service of the St. Louis, Iron Mountain and Southern the service which they can give on the south side adequate for the proper service of industries on the south side?

Mr. Baulch: Well, we did not find it so."

In my opinion, it is not adequate for the proper develop-
313 ment of the south side as an industrial and manufacturing district.

"Mr. Cassoday: Is there anything about the topography of the country which would make it impossible for the Iron Mountain to serve industries located very far from the river, in any part of this district?

Mr. Baulch: South of Potomac street, it would be impossible for

them to side track, * * * because there is an abrupt bluff that rises from the river. * * *"

It rises rather abruptly in all of that territory south of Chouteau avenue, as far as we go to the west, but not to the extent that it does after you strike Potomac street. That is illustrated by the grades on our Dorcas and Pestalozzi street lines, and it becomes more acute as you go south.

The Iron Mountain has a number of tracks at certain points along the river front. The principal use which they make of them is for storage tracks for the operation of their road and public delivery tracks. They have, I presume, storage tracks for their Mill Creek Valley business, of which they have more or less to take care of. My first recollection of the Iron Mountain track along the river was in 1874. I do not know when that road was constructed.

The Iron Mountain main line extends south of Cherokee street, and they have sidings on the river front, south of Cherokee.

Our Second street yard is located just east of Broadway, north of Arsenal and south of the Pestalozzi street line. It is indicated on the map which Colonel Stone produced, by a red line from which run a large number of other red lines, diagonally toward Arsenal street and Broadway.

314 I never heard the word "interwork" switching until today, but it is the general impression here that all the railroads or terminals in the City of St. Louis charge one dollar per car for such "interwork" switching. For our company, I can only say, it is collected, so far as I know; I have reported it regularly.

"Mr. Cassoday: You are thoroughly familiar, Mr. Baulch, with the movement of the cars over your line from one point to another; for instance, a car from the rice house up to the brew house, what it would go over, are you not?

Mr. Baulch: Yes, sir, I am.

Mr. Cassoday: Now, I don't care to have you explain that, but because of the situation that arose yesterday, I wish to turn the witness over to my worthy friend here for examination on that subject. He is the gentleman that we stated knew the facts in regard to it and I now produce him for that purpose."

Cross-examination by Mr. Jeffrey:

The first extension of the Manufacturers Railway line of which I spoke was in 1905. Prior to that the railway consisted of the line from point of connection with the Iron Mountain and Southern west on Pestalozzi street to Ninth street; also the Broadway yard, and the Second street yard; the Stecher yard track, the Second street yard, the track to the wash house and the track round to the dried grain plant existed January 1, 1905. We had no tracks whatever along Second street. We had no proposed extension shown on Exhibit 25 by the orange colored line. In 1905 the Manufacturers Railway consisted solely of tracks running west from the

315 Iron Mountain connection at the river up to the brewery and a few miscellaneous tracks on the river front.

We had other business at that time. We handled business for

Morris & Company's beef plant; the St. Louis Dressed Beef Company, and the Stecher Cooperage Company, which is not connected with the brewery, so far as I know. Stecher unloads his beer from his brewery in Murphysboro, on his track in that yard. It is within a very short square of Anheuser-Busch Brewery. I don't know whether he has to team his empty kegs in there.

About five hundred feet of our line, marked yellow on Exhibit 25, has been constructed. It was completed, I think, in 1908. We are working on it now, excavating and grading. The Second street yards are used for loading and unloading of all kinds of freight. Principally beer packages and beer. I don't know the percentage of beer and beer packages, as compared with other business. It is not practically one hundred per cent. I know of other things unloaded there besides beer packages, namely, salt, which was unloaded by teams. I don't know whose teams, nor whether they were brewery teams. I suppose the brewery uses salt. The rice was going to the rice house of Anheuser-Busch Brewery. I know we actually handled other business than the brewery's in that yard; namely, baskets and empty boxes from the St. Louis Basket & Box Company, not going to the brewery.

As I understand our tariff, I. C. C. No. 7, reading: "When cars are placed at one point and ordered moved to another point in the same industry at St. Louis a charge of one dollar per car will
316 be made"—I would not collect a dollar for switching a car from the St. Louis Basket works to the Anheuser-Busch Brewery, because the basket company is not a point in the same industry.

Mr. Jeffery: Do you think from your experience as an operating man, knowing as a matter of general information what the cost of operating a terminal line is and the switching line—is that dollar charge for interwork switching, in your opinion, reasonable or unreasonable?

Mr. Baulch: Neither. * * * It is not sufficient for the service."

A sufficient charge would depend on the order of service that might be rendered. I cannot give a maximum or minimum figure.

Cross-examination by Mr. Butterfield:

When I say a charge of one dollar is not sufficient, I mean it is not the equivalent of the cost.

Mr. Stone: I don't care to ask Mr. Baulch about the interwork switching.

AUGUST A. BUSCH testified:

I am the son of Adolphus Busch; live in St. Louis; have lived here for forty-four years and am vice-president of Anheuser-Busch Brewing Association. I have been connected with Anheuser-Busch Brewery for about twenty-four years and while in St. Louis have lived at No. 2 Busch place, which is right in the brewery premises.

I am familiar with the characteristics of the development and

growth of South St. Louis and the immediate vicinity of
317 what is now the Anheuser-Busch Brewery plant. I am chairman of the Board of the Manufacturers Railway; have been connected with it about two years and a half; was formerly merely a director. I am a member of the Board of Directors of the Anheuser-Busch Brewing Association. I know the Stecher Cooperage works, the Independent Breweries Company, the Bradbury Marble Company, the St. Louis Basket & Box Company; the Fidel-Genahl Lumber Company, St. Louis Cooperage Company and Western Foundry & Sash Weight Company, each of which is a corporation having an office in St. Louis, and a complainant in this case. Neither the Manufacturers Railway nor the Anheuser-Busch Brewing Association has any shares of stock, or any interest, either direct or indirect, in any one of those companies named as complainants with the Manufacturers Railway Company. The statement which has been filed showing as stockholders of the Manufacturers Railway Company, Adolphus Busch, the Schuttler estate, and myself, is correct. The same three holders own stock in the Anheuser-Busch Brewing Association; but there are no other persons, stockholders in the Anheuser-Busch Brewing Association, who own any interest directly or indirectly in the Manufacturers Railway Company. The stockholders of the Anheuser-Busch Brewing Association number about fifteen or twenty; among them there are persons who own no interest either direct or indirect in the Manufacturers Railway or any of its shares of stock. The only stockholders of the Brewery who have any shares of stock or any interest direct or indirect in the Manu-
318 facturers Railway, are Adolphus Busch, August A. Busch and Mr. Faust, who holds his share merely as a qualifying share owned by either my father or me.

My father, Adolphus Busch, holds two hundred and sixty-nine and one-half shares in the Anheuser-Busch Brewing Association; I own five and five-sixths shares; the Schuttler estate, I think, owns twenty-three shares; the total stock issue is four hundred and eighty shares of a par value of $500 each. The capital stock is $240,000. The total proportionate holding of my father, myself and the Schuttler estate, is about sixty per cent. of the total stock of the Anheuser-Busch Brewing Association; leaving about forty per cent owned by persons who own no interest direct or indirect in the Manufacturers Railway. I think there are five children interested in the Schuttler estate shares.

"Mr. Kirby: Mr. Busch, will you look at the list, Exhibit 41, at the names of the firms, corporation- or persons listed there, and state with which, if any of them, the Anheuser-Busch Brewing Association has any financial interest as a stockholder or otherwise?"

"Mr. Jeffery: As I understand it, he will give not only the Brewery, but any of his family."

"Mr. Busch: Yes, be very glad to do so."

"Mr. Kirby: The proposition is, Mr. Busch, to give whether the Brewing Company, the Manufacturers' Railway Company or any of yourselves are either beneficial or actual owners."

Neither the brewery, the railway, nor any of our family has any interest in the American Brewing Company.

The American Diesel Engine Company is owned by Adolphus Busch, individually.

319 Neither of us has any interest in American Naval Stores, Atlas Leather Manufacturing Company, Bradbury Marble Company, Brueckmann Cooperage Company, or Budor Lumber Company.

The Adolphus Busch Glass Manufacturing Company now belongs to the brewery; it is a separate corporation, which at one time operated the plant, but within a year it has been changed and it now belongs to the brewery.

Neither of us has any interest in M. Cohen, Clark Mercantile Company, Columbia Cooperage Company, Columbia Pretzel Company, Cramer Dry Plate Company, H. Davis, W. Diehl, Donk Bros. Coal Company, Dorris Motor Company, Ehlermann Hop & Malt Company, N. K. Fairbanks, Ganahl Lumber Company, or Geller, Ward & Hasner. In Gilsonite Construction Company, Mr. Adolphus Busch has some stock, but does not control the company. Neither the brewery nor I have any stock in it. Neither the brewery or railway, nor any of our family have any interest in F. W. Goeke & Co., Groepper Cooperage Company, Green Tree Brewery, P. Gutjohn, R. W. Harbison, Harvey Faust Brokerage Company (that Faust may be my brother-in-law, I am not sure), E. B. Hill & Brother, Hoffman Hogan Construction Company, Hirsch & Sons, or M. Kahn.

The Hoffman, Hogan Construction Company does some construction work for us off and on. I don't think they are doing any now.

There is no interest in J. Kahlmeyer; in Kinloch Telephone Company, Mr. Adolphus Busch owns some stock, and probably
320 bonds, but does not control it. There is no interest in A. Klauber & Sons Co., A. Kuenzel Mfg. Co., J. F. Lamson, Langenberg Bros., W. J. Lemp Brewing Company, Lothman Cypress Co., Lox Safety Pin Co., Luehrmann Hardward Company, Missouri Realty & Inv. Co., or Madison Coal Co. In Manufacturers Railway Company, sure. No interest in Meyer Meinhardt, Meyer Supply Company, Morris & Co., National Brewing Co., John Nooter Boiler Works, Northwestern Bottle Company, W. D. Orthwein, Purina Mills, H. Quelmalz, Reinschmidt & Haenni Construction Co. (I don't know whether they have done any work for us; if they have it is not enough for me to remember it).

In Ruemmelli, Dawley Manufacturing Company, Adolphus Busch owns some stock, a few shares; but does not control it. There is no interest in W. F. Ruprecht, J. P. & W. H. Richardson, St. Louis Basket & Box Co., St. Louis Cooperage Co., St. Louis Dressed Beef & Prov. Co.

The St. Louis Dried Brewers Grain Company is a part of Anheuser-Busch Brewing Association. There is no interest in St. Louis Pretzel Company, or in St. Louis Ratan Company.

The St. Louis Refrigerator Car Company is an organization in which we have shares but not the control; there are about fifty-four

different people interested in it. I think I am vice-president. The following persons connected with the Anheuser-Busch Brewery are stockholders: Adolphus Busch, 154 shares; August A. Busch, 52;
August A. Busch, Trustee, 58; Edward A. Faust, 50; R.
321 Muehlburg, 5; Anheuser-Busch Brewing Association, 1110;
Anna Busch Anheuser, 60; Schuettler estate, 300; the total number of shares is 7,000.

We, i. e., Adolphus Busch, August A. Busch, Edward A. Faust and Anheuser-Busch own about forty per cent. I will be glad to permit this list of stockholders to be made an exhibit. It is Exhibit No. 82.

Neither the brewery, the railway nor our family has any interest in Schaff, Pfau & Ganahl P. M. Co., Schroeter Coal Company, Spuck Iron & Foundry Co., Trinidad Asphalt Co., Teichmann Commission Co., Union Brewing Co., Union Cooperage Co., C. H. Verbarg, Fred Wagner, H. Williams, M. M. Warren Coal & Coke Co., Waldstein Lumber Company, Western Anthracite Co., Standard Furniture Co., Stecher Cooperage Co., Stute & Co., Southern Coal Co., Western Foundry & S. W. Co., C. Zimmerman, Independent Coal Co., or South Side Coal Co.

I think my father is a holder of a considerable amount of stock in some of the railway companies which are defendants in this case; I don't know which.

I was here in 1887 when the Manufacturers Railway Company was organized; the first line built after its organization was the Pestalozzi street line; it ran from Second street up to the brewery; it ran down to and connected with the Iron Mountain track. The Iron Mountain operated the Manufacturers Railway property under two leases of ten years each. The last one expired about April, 1908.

Shortly before April, 1908, I had a conversation with Mr.
322 Clark and other officials of the Iron Mountain in their office
in this city. Adolphus Busch, Mr. Clark, myself, and a few others, I don't remember who, were present. They asked us to renew the contract, to which I told father I should not like to see him become a party because it would disturb arrangements I had made. I had in mind branching out and making a new terminal in the City of St. Louis. My father said:

"Gentlemen, you see I cannot control that boy; he wants to go ahead with his plans, and I don't want to stand in his way."

In 1887, that part of South St. Louis between Broadway and the river and east of where our plant is now, was a poor looking place; there were sink holes there, and but few factories; the old Car Foundry was there; also the Basket and Box company, the latter, at its present location. The Iron Mountain was the only railroad facility at that time.

During the twenty years while the Iron Mountain operated the lines of the Manufacturers Railway, the character of the service rendered by it was pretty poor, at times extremely so.

"Mr. Kirby: In what way was it poor?

"Mr. Busch: They didn't have adequate engines to do our business. We used to term them 'tea pots' instead of engines."

We made efforts to improve the service. We bought engines and then when they were flush they would pay us. That happened several times. The sad part about it was they didn't keep them in the Manufacturers Railway yard, but they took them out and used them on Lesperance street, where they needed them even worse
323 than they did in our place. I first made plans to extend the Manufacturers Railway, particularly, the lines running east and west from the Iron Mountain to the river, when I asked for the franchises that I obtained from the city. One of my earliest plans or steps was arranging to rent the river yard. I negotiated and obtained that lease from the City of St. Louis. In determining how to carry out my plans for extension of the line, I employed Mr. Edward Flad, an engineer in the City of St. Louis, who was at one time Water Commissioner of the city. I instructed him and Mr. Baulch to lay out a great railroad scheme coming into St. Louis. I wanted to create another terminal. I told them what my plans were as to crossing the river and as to the river yard. At that time I decided on trying to go up Second street, and told Mr. Flad to make surveys to ascertain the grades over the proposed route; to make plans for an incline, and then went so far as to asking him to make a plan for a freight and passenger station near Chouteau avenue and Fourth street. Mr. Flad carried out my instructions, made plans and surveys and submitted them to our people. He surveyed and built the line up Second street and built the viaduct; he drew plans, or plats, and prepared estimates for the proposed station near Chouteau avenue. They contemplated a good passenger station and provided for a connection of our Second street track at a connection with the Poplar street track of the Missouri Pacific. Poplar street was as far up as we could go under the franchise. I think Mr. Flad also submitted plans for a tunnel under the Mississippi river and gave estimates and cost of ferries to cross the
324 river, showing the relative cost of crossing by tunnel, as compared with crossing by ferries. Mr. Flad prepared the plans and specifications for the construction of the viaduct. He also made and submitted plans and surveys and put down stakes for the southwestern extension, and that would have been almost done if it had not been for injunction proceedings. Those plans were submitted to me in 1907 or '8, I don't remember the date exactly. We didn't extend our Second street line north to Poplar street because we were enjoined by Seibel-Suessdorf Company and others in 1905; an injunction suit in which the lawyers for the complainants were the same lawyers who are attorneys for the Terminal Railroad Association. I procured ordinances from the City of St. Louis permitting us to extend our lines. We needed an ordinance for the Second street line, north and south; for the Dorcas street line; for the viaduct, and for the river yards; also to cross streets and alleys wherever any of our lines, switches or sidetracks crossed them. I attended public meetings held at the City Hall of committees of the House or Council of the Municipal Assembly, at which the question of whether those ordinances should be granted to the Manufacturers Railway Company was discussed publicly. At those meet-

ings we told the people that we were going to bring a new terminal into the City of St. Louis and those statements were published generally at that time in the newspapers.

There was quite a little public interest and excitement over the question whether we would get the ordinances or not.

325 "Mr. Jeffery: Was there any excitement in railroad circles at the time?

"Mr. Busch: I believe there was; I don't think you looked upon it as a joke from the start."

We were at the City Hall hundreds of times showing what we intended to do with our plans and our engineers and our whole working force. I think we submitted written statements showing our plans, and that we intended to create a terminal railroad in South St. Louis. One of our ordinances requires the Manufacturers Railway Company to build a car transfer across the Mississippi river; also a belt line on the east side.

"Mr. Kirby: Is it your intention to carry out the provisions of that ordinance on those points?

"Mr. Busch: Everything we promise to the people of the City of St. Louis we always carry out."

We have bought some real estate on the east side looking toward carrying out that obligation and are negotiating for more now.

"Mr. Kirby: When you speak of the plans that you have, and intentions with reference to extensions of the line, are we to understand that your father, Adolphus Busch, is with you in sharing those plans and intensions?

"Mr. Busch: Absolutely."

The Manufacturers Railway is offered opportunities through negotiations to become connected with, or purchase lines of railway on the east side. We had conferences with several people concerning the Litchfield and Madison road, the St. Louis, Troy & Eastern, the St. Louis & O'Fallon, and the Illinois Terminal, and we dropped the scheme because they wanted us to entertain the coal end of it, also, and we didn't care to embark in that end of it. They

326 wanted us to entertain the operation of coal properties on the road. There have been several negotiations with us looking toward the acquisition by the Manufacturers Railway of an interest in or connection with a line extending southwest from the city limits of St. Louis, a new trunk line to Fort Smith. Those negotiations are still under consideration by us. Our last conference with a representative of foreign capital about that plan was about three or four weeks ago. There are also railway or trolley schemes running south from the City of St. Louis which have tried to form alliances with the Manufacturers Railway.

No part of the lines of the Manufacturers Railway are necessary for the service of the Anheuser-Busch Brewing Association, except the Pestalozzi and Dorcas street lines; the Second street line is of absolutely no service to the brewery.

"Mr. Kirby: Mr. Busch, what is your observation as to the relative industrial development of the factory district in South St. Louis

compared with the factory districts in other factory or industrial sections of the City of St. Louis?

"Mr. Busch: Well, I am sorry to say that it is in the hands of one road all these number of years, and that South St. Louis did not develop at all in consequence; nothing to be compared with the northern end."

I think that has been on account of the poor service the Iron Mountain has been rendering the various industries along their line. The reason for organizing the Manufacturers Railway in 1887 was for the purpose of tapping the brewery. We needed to establish railroad connections because we wanted to have our
327 stuff up there in carloads. Our reason for wanting to extend our line beginning in 1903 beyond the lines from the Iron Mountain to the brewery was to get out of the clutches of the Iron Mountain. Our plans contemplated the creation, organization and operation of a terminal system. We intended that to serve the public at large. The street called "Broadway" in St. Louis is the main north and south street over which traffic passes from the extreme northern end of the city limits to the extreme southern end; it is about twenty odd miles long, about ninety to one hundred feet wide and has street cars on it. It is wider than most streets in that part of St. Louis.

Cross-examination by Mr. Butterfield:

Neither the Anheuser-Busch Brewing Association or the Manufacturers Railway Company or any members of our family have any interest in any of the companies which are co-complainants with the Manufacturers Railway in this case. In the answers which I gave about the industries or patrons along our line, as shown on Exhibit 41, I meant, in telling what persons had any interest in those industries to include all interests or ownership beneficial as well as actual title, and owned either by the Anheuser-Busch Brewing Association, the Manufacturers Railway, the Schuettler estate, or any of our collateral relations or members of our family; and my answers were correct. The Anheuser-Busch Brewing Association buys some cooperage from Stecher Cooperage Works. We give
them a fair share of our business, but we do not treat them
328 better than any other cooperage works. We do not buy about all they manufacture. They supply all the breweries in the country and elsewhere. We do not buy at all from the Bradbury Marble Company, and very little from the St. Louis Basket & Box Company. The office of the Stecher Cooperage Works is on our property, rented to them. It is under lease. We recently bought the property from the School Board. The Independent Breweries Company is not located on our property, nor did they buy it from us. The Basket & Box Company is on our property; the Fidel-Ganahl Company, also, I think; the St. Louis Cooperage Company is on our property. By "our property," I mean some is railroad property, other is Adolphus Busch, other is Anheuser-Busch Brewing Association.

The total capital stock of the St. Louis Refrigerator Car Company

is $700,000.00. The company has not been paying dividends for the last five years, except last year, and then they paid four or five per cent. dividends.

Mr. Butterfield: Mr. Cassoday, do you concede that the original copy of the lease, Exhibit 22, never had any blue print attached to it and bears no file mark?

"Mr. Cassoday: I do."

Cross-examination by Mr. Wood:

"Mr. Wood: Have you a map, Mr. Busch, or do you know whether either the railway company or the brewery has a map or tracing of any sort showing the location of the tracks of
329 the railway inside the property owned by the brewery and the relation of those tracks to the buildings of the brewery and the lands owned by the brewery?

"Mr. Busch: I think such a map is in existence."

We will have a blue print made and filed as a part of the record. (This blue print or showing is included in what is shown by the large blue print of map, filed later but not marked as an exhibit. It is the map showing in colors the tracks, etc., of the three lines in South St. Louis.)

There are about one hundred and sixty-two acres in the plant of Anheuser-Busch Brewing Association, perhaps, more or less. Approximately, I think, that is correct. The boundaries of the land belonging to the brewery are: On the west, Thirteenth street; north, Lynch, south, Utah, and east the river front. I think the lease covers about nine miles of track. I think it covers all the lines in the boundaries I have given.

"Examiner Hillyer: Mr. Busch, in your testimony yesterday you referred to the poor service which had been furnished you by, I think, the Iron Mountain.

"Mr. Busch: Yes, sir.

"Examiner Hillyer: You had at one time physical connection by means of your Pestalozzi street track with the Iron Mountain, hereby forming a through route for the transportation of interstate commerce?

"Mr. Busch: Yes, sir.

"Examiner Hillyer: As a large shipper of freight in interstate commerce, did you consider that route a satisfactory one, not only as to physical connection, but as to traffic conditions? * * *

"Mr. Busch: No, sir.

"Examiner Hillyer: Was it a reasonable one?

* * * * * * *

330 "Mr. Busch: The whole conditions as they existed prior to our time of going into the railroad business were very unsatisfactory to the Anheuser-Busch Brewery and to the people at large in the City of St. Louis, I talk especially of the southern end of the city."

The commodity produced by Anheuser-Busch Brewing Association is a perishable commodity, requiring quick service.

"Examiner Hillyer: And if then you could have your present arrangements thrown back,—if the clock was turned back to where you were at the time you formed the Manufacturers Railway and provided yourself with what you considered a satisfactory through route, that is, getting out on the Wiggins Ferry and getting out of the clutches of the Iron Mountain, as you expressed it, you would then be again in the position of having an unsatisfactory through route?

"Mr. Busch: It would be a deplorable condition.

"Examiner Hillyer: How would that effect your business.

"Mr. Busch: Very materially, for the simple reason, that we pay large union wages, and we cannot afford to keep these men idle and receive poor service, such as we had received prior to the time of going into our railroad enterprise."

The same conditions would apply to every other shipper in South St. Louis depending upon facilities other than those furnished by the Manufacturers Railway Company.

Cross-examination by Mr. Jeffery:

When we took hold of the road matters changed and conditions were exceedingly good. While we were in the hands of the Iron Mountain they were exceedingly poor. About January first
331 of this year, they were all right, satisfactory. At that time the Iron Mountain rendered us no service. We did not give them much business. We sent it over the Wiggins Ferry route, with which we have direct connections at this time. We want to re-establish the situation as it was January first, this year, and want the Commission to recognize us as a terminal railroad, a new terminal road in the City of St. Louis, and as a common carrier, of course.

"Examiner Hillyer: What were some of these elements of the service that you refer to? Were you delayed in getting your traffic out into interstate commerce?

"Mr. Busch: Yes, sir.

"Examiner Hillyer: Do you recall any instances at the present time, in your experience, in trying to get satisfactory service?

"Mr. Busch: There are hundreds of letters on file. * * * That was about the time the Manufacturers took hold of it."

The engines which the Iron Mountain furnished us were extremely poor engines, inadequate for the grades of Pestalozzi street; we were delayed in securing car supply. The connection which we now have with the Wiggins Ferry we obtained through our own initiative and efforts, by building the viaduct.

"Examiner Hillyer. These conditions that have just been enumerated here apply to all industries in South St. Louis depending on the Iron Mountain? * * *

"Mr. Busch: In talking to the manufacturers that are on that road I invariably heard the same complaints.
332 The Anheuser-Busch Brewery has been in existence for about fifty years. The viaduct was put in operation something over a year ago, I think, in 1909. During all the time since then the outlet of the Brewing Association to the east of the Missis-

sippi River has been by way of the Wiggins Ferry. The outlet for its shipments to points west of the Mississippi River before we had the viaduct was by the Iron Mountain and Southern, and since we have had the viaduct we have used the Iron Mountain occasionally for western shipments. I don't think the western shipments crossed to the east side after leaving our viaduct and then back again to the west side. If we were routing a car from the brewery to Kansas City not over the Iron Mountain, it would go first to the Manufacturers Railway then to the Wiggins Ferry, but it would not cross the river if it was destined west. The Manufacturers Railway has a track connection with the Iron Mountain at Park avenue and three near Arsenal street. It has one connection with the Wiggins Ferry by the viaduct. That is the only one. I understand that east bound shipments of beer from the brewery pass over the track of the Manufacturers Railway and are delivered to the Iron Mountain connection by the viaduct; all go over the Wiggins Ferry line but they may take them by the bridge; I don't know how they handle it. There are two routes eastward.

333 "Mr. Jeffery: Mr. Busch, are there any stockholders in the Anheuser-Busch Brewing Association who are not related through blood or marriage to either the Buschs or the Schuttlers or Fausts, that is, isn't it a family concern entirely?

"Mr. Busch: Yes, it is a family concern."

ROBERT H. WHITELAW testified:

I am a wholesale shipper of heavy chemicals; have lived and done business in St. Louis forty-four years. I am a member of the Board of Free Holders, an elective position; that Board is a bi-partisan board, six members selected from each political party, and elected at the last city election. The Board is now engaged in preparing a charter for the City of St. Louis, to be presented to the voters at some future time. I was a member of the Board called the "Municipal Bridge and Terminal Commission." I served on it about four years. It was a Commission created by the Municipal Assembly of the City of St. Louis to inquire into and determine the hindrances to the commerce of the city as to terminal conditions. The Commission was provided for by ordinance; the Mayor of the city to be Chairman and appoint seven merchants who should serve without compensation upon the Commission. I was vice-Chairman of that Commission for about three years and a half. That Commission is not still making an investigation; it discontinued its work about sixty days ago; I have not been a member of the Commission for

334 about a year. I resigned my membership to accept the appointment as a member of the Board of Free Holders at the election about a year ago. While I was a member of the Commission, four years, time was given by the Commission to making investigations for the purpose of informing ourselves about the terminal facilities of the City of St. Louis and the railroad service rendered to industries and shippers in the City of St. Louis by the railroads entering St. Louis and East St. Louis. Our investigations were exhaustive and extensive. They included interviews with the executive man-

agers of railroads for the purpose of getting information from them as to facilities, as to relations between the railroads and shippers, and every branch of the railroad service was interviewed from the traffic managers to the commercial agents, and also with transportation people, so far as we could. I feel familiar in a measure, as a result of my investigations and observations, with the terminal situation in the City of St. Louis and East St. Louis.

"Mr. Kirby: What is your opinion, Mr. Whitelaw, as to whether if the Manufacturers Railway were eliminated from South St. Louis, that district of the City of St. Louis would be adequately served with terminal and switching facilities as they now exist furnished by the Iron Mountain and Wiggins Ferry?

"Mr. Whitelaw: In a general way, I consider the Manufacturers Railway Company even at the present time, a very important factor in terminal development in South St. Louis, and naturally, of the whole city, if of South St. Louis.

"Mr. Kirby: How do the terminal facilities afforded to industries in South St. Louis compare with the terminal and shipping facilities afforded in other manufacturing and industrial sections of the City of St. Louis?

335 "Mr. Whitelaw: Generally speaking, I should say that — were not as well served as in north or west St. Louis. * * *

"Examiner Hillyer: Was it the function of that Board of which you were a member to receive complaints from the shipping interests of the city?

"Mr. Whitelaw: Yes, sir, the shipping interests were invited to co-operate with the Commission in its work."

Our Board was simply for recommendation to the Municipal Assembly. It had no authority. We made six official reports in pamphlet form to the Assembly; they are a matter of record. I think copies can be obtained from the City Hall.

"Examiner Hillyer: Please obtain copies and file them with the Interstate Commerce Commission. * * *

(This was done later.)

"Examiner Hillyer: Mr. Whitelaw, how did complaints, to which Mr. Andrews objects, from South St. Louis compare with complaints from North St. Louis?

"Mr. Whitelaw: The grievances, if you please, were of long standing in this community, a number of years. What I wish to say, is that the grievances which made it necessary or made it desirable for the creation of a commission here had existed for a great many years in St. Louis. I don't know that I could specify as to the sentiment which might come from any portion of the city as compared with another; it was very general, if you please, all over the city."

The hindrance to the commerce is covered in our reports, which are public records furnished to commercial interests and the Interstate Commerce Commission has heretofore been supplied with copies.

All of the defendant carriers are quite familiar with the work
336 because we had frequent conferences with the lines represented here, during that four years.

Cross-examination by Mr. Stone:

I am quite sure each common carrier was furnished with a copy of that report. I don't know it to be a fact, except as to your own people, Mr. Stone, your representatives, in this city were in constant conference with us all the time. I am quite sure they have it, a good many copies of it. I can say that every traffic official and every proprietor of every line in St. Louis was supplied with a copy.

In our investigation we didn't put men under oath who testified before us, if we had authority of that kind, we didn't exercise it.

CHRISTOPHER W. JOHNSON, testified:

I am a manufacturer; president of the St. Louis Basket & Box Company; I have been a member of the "Board of Education" in St. Louis for fifteen years and have served as President or Vice-President on several occasions.

The St. Louis Basket & Box Company has a plant at Second and Arsenal street-, which is on a spur of the Manufacturers Railway; we also have a plant on the Burlington road in North St. Louis. In our North St. Louis plant we probably have $175,000 invested. In our South St. Louis plant, at Second and Arsenal streets, practically the same. We have recently made quite an addition to the South
337 St. Louis plant; we prepared our plans last Fall and the work is practically completed.

The extent of the addition is about $55,000. In considering a possible different location for that additional facility than the one on the south side, it was a question in my mind as to whether I should build in North St. Louis, but the fact that the Manufacturers Railway offered us inducements, such as facilities, led me to build it in South St. Louis. The service which they could render induced me to put our extended plant there. Our company makes fruit packages and veneer lumber; we get our lumber practically in the log; we have been getting most of the material by river, but very recently we were assured we could get a road to bring material by rail; hence, I have planned to get most of it by railroad; that was quite recently, in February or March, 1910; I think the rate was made by the Frisco, March 10, it may be April 10th.

That enables us now to bring our logs in by rail; I have got to use the Manufacturers spur. The river would be the cheapest means of transportation, but I was led to believe the Manufacturers could serve us and that we could get these logs placed near our derrick without additional charge. When logs come in by rail they are simply thrown off near our crane on the river bank and brought up on a small tram to the factory; there is no way except by the Manufacturers, which would enable us to unload those logs by our crane; we are dependent entirely upon that crane and tram. The only other way in which we could handle the logs conveniently and efficiently would be by river. In that case the crane would also be used.
338 There is no other way to use the logs conveniently and satisfactorily, except by the use of the crane and tramway. The service which the Manufacturers Railway has been giving us has been

fairly satisfactory. I consider the Manufacturers Railway Company a necessity to our business.

"Mr. Cassoday: Do you consider the Manufacturers Railway Company a necessity so far as industrial service to the industries and manufacturing plants in South St. Louis is concerned?

Mr. Johnson: I am free to say that the Manufacturers Railway Company is a great help to the industries in South St. Louis.

Mr. Cassoday: Has the South Side of St. Louis developed to the same extent so far as manufacturing industries are concerned as the North Side has, or the Mill Creek Valley?

Mr. Johnson: As a manufacturer living twenty-five years in South St. Louis, I should say not.

Mr. Cassoday: What would you say was the reason for that?

Mr. Johnson: There may be a number of reasons. I should say the vital one would be the poor service of railroad facilities."

Cross-examination by Mr. Jeffery:

I think, but am not sure, that we pay the Manufacturers three dollars a car for switching. Our office is at Second and Arsenal street. I see their engines switching in and out. I don't know that the yard spur is now being operated by the Iron Mountain with its engines. I am not familiar with the regulations. I do know that the Iron Mountain does put in cars. I cannot say that I have seen their engines in there recently, possibly in the last three months. I know that when the Iron Mountain engine
339 switches any cars of lumber hauled by the Iron Mountain Company, that we do not have to pay any switching charges. The Iron Mountain can't get to the river. Our logs get in from the river bank over the Manufacturers. I don't know what we pay for that, whether $2 or $3 a car. We have an available way or route by the Iron Mountain for our out going freight, but not for the logs coming in, because they have to be unloaded on the river bank, where they are solely on the tracks and property of the Manufacturers Railway. If it refuses the Iron Mountain to go in there we cannot get our material in that way. We are confined to the river for the movement of our logs because we have our tram under the track, and have no means of getting to our plant. It all has to come up under the Iron Mountain tracks. The arrangement of which I spoke of with the Frisco is simply that they offered a rate which now enables us, if we could get the switch or the use of the Manufacturers track, as I was led to believe or informed would be done, we can ship these logs by rail to a great deal better advantage than by getting them out of the river. We could use that track for delivering. I now get our logs largely but not altogether by water—sometimes by rail, and they are handled by the Manufacturers, the original carrier is the Frisco; they absorbed the switching. I think their rate is based on a cent and a half, or six cents a hundred. I don't know what the switching is. We have a rate of that kind, seven and a half cents from Steel, Missouri. We figure on using that entirely. That is,

delivered to the Iron Mountain, but what the switching is, or
340 additional charges are, I don't know. They do not allow anything for the Manufacturers Railway switching, but they will deliver the logs to the Iron Mountain. Now we cannot use the Iron Mountain because the Manufacturers Railway have the right-of-way to get to our crane, and we cannot get in there without paying that additional, and that is a hardship. I don't know about the absorption. We have no logs on the Iron Mountain. This is our own timber back of Steel.

Redirect examination by Mr. Cassoday:

We own about twenty thousand acres there from which we get our logs. We have a tram laid on our lumber land, and run our logs into the river. We have a railroad, the Mississippi Valley Railroad which starts from Tyler, and was built largely for our business. We can either divert the business by rail or ship it to the river. We want to ship it by rail, because it is a hardship to carry a large stock on hand. It deteriorates, and we would much prefer to have that come in by rail. The Mississippi Valley Railroad gets no allowance when we ship by rail. We also ship logs to our north side plant. I think the Burlington serves us there. We do not pay any switching charge up there in addition to the St. Louis rate, but we do down here when it comes on the Manufacturers.

Recross-examination by Mr. Stone:

We lease our land from the Anheuser-Busch Brewing Association, but do not sell any of our product to them. Our logs which come by river come up the Mississippi River, about two hundred and
341 fifty miles. Our landing is at the foot of Arsenal street. From that landing, we have a tramway running under the surface of the Iron Mountain track, right up to our factory. It is operated with a sort of cable. It is our property, and we operate it. When our product is completed, we send it out, and we have a spur track connecting with the Iron Mountain. It is from five hundred to one thousand feet long, and furnishes a good outlet which we use. I understand the Manufacturers Railway has acquired our spur; hence, we are solely at the mercy of the Manufacturers. I think that was early in February of this year. The track which we had before with the Iron Mountain, afforded us a very substantial and reasonable line for our product that was shipped out. It has been shut off from us recently by the Manufacturers Railway, and we now have to pay a charge of either $2 or $3 a car. We have paid that under protest. Our average output is about three hundred cars. We have no other outlet for our product than the one over that spur track connecting with the Iron Mountain. We could haul up over to Dorcas street, but it is a hardship. The distance is three or four blocks from our factory. We do occasionally use the Wiggins Ferry tracks, and we could escape the switching charge of the Manufacturers Railway by doing so. Our plant was located there thirty years ago. The Iron

Mountain then ran along the river front. We never during all that time had any railroad service for our incoming logs until the Manufacturers Railway furnished the service they now give us.

342 Redirect examination by Mr. Cassoday:

The crane of which I speak is on the river front at a place a little south of the line of the viaduct, and about opposite Arsenal street. Our logs all come from a point in the State of Missouri.

A. C. F. MEYER testified:

I am cashier of the South Side Bank, St. Louis, and have been six or seven years. Prior to that I was a practicing attorney in St. Louis for about ten years. I have lived in South St. Louis all my life. In my business as a banker we have a large number of accounts with industries, factories and shippers who do business in South St. Louis in the factory district. I am familiar with the geography and situation and location of those plants, and with South St. Louis property located in the factory district of South St. Louis. I am also familiar with the general conditions in the Mill Creek valley and in North St. Louis in the factory districts.

"Mr. Kirby: What is the fact as to the comparative growth of the factory and industrial section of South St. Louis as compared with the Mill Creek valley and North St. Louis?

Mr. Meyer: From my observation, while South St. Louis has made some progress in the last ten years, it has been small compared with that of North St. Louis and West St. Louis."

The development and extension of the Manufacturers Railway Company lines north and south on Second street has created a substantial increase in the value of real estate in the immediate
343 neighborhood of the Manufacturers Railway tracks, and where they are projected. The section of South St. Louis beginning on the north with Poplar street, bounded on the east by the Mississippi River, and west by Eighteenth street, south by Zepp street,—in my judgment ought to be manufacturing property, and that is the only thing in store for it.

"Mr. Kirby: What is your observation as to whether the Manufactures Railway through its location in South St. Louis, and through the extensions of its line, is bringing in new industries into South St. Louis?

Mr. Meyer: I have heard a great deal of talk in the last five years relating to plants coming down in our section, and also in connection an increase in present industries that are there now."

C. W. JOHNSON recalled:

Cross-examination by Mr. Jeffery:

Neither Adolphus Busch, August A. Busch or any member of the Busch family or the Anheuser-Busch Brewing Association or the Manufacturers Railway owns any stock in our company, the St. Louis Basket and Box Company. We sell none of our output to the Anheuser-Busch Brewing Association or its allied companies.

JOSEPH PAULY testified:

I am connected with the "Pauly Jail Building Company," and have been for twenty-six years. The business has been established since 1856, by my father and his brother. It is located on
344 De Kalb street, between South Trudo and Barton, in what is known as the "South Side." I was born in St. Louis in 1870. I have noticed the difference in the development of the north section of the city, and of the Mill Creek Valley, and the section known as the South Side of St. Louis. I have spent practically all of my life on the property extending between Chouteau avenue on the north, the south boundary of the city on the south, the Mississippi River on the east, and Eighteenth street on the west. In my opinion that section of the city is best adapted for business and manufacturing. As a residence section, it is practically out of date. From a business point of view, that section of the city has developed very slowly compared with the Mill Creek Valley or the North Side. I account for it by the insufficient and inadequate railroad terminal facilities. The manufacturer has no opportunity to get the proper service to locate in that end of the town. I have had personal experiences of that kind in connection with my business. We have no switch or spur track in to our property. We have made no serious effort to get it because we could not see any satisfactory service in sight and did not want to experience what one of our neighbors to my knowledge is now experiencing. I mean the Pioneer Cooperage Company. They are paying $1 a car over and above ordinary switching charges, to get their service. They cross private property of the American Car & Foundry Company, which is located on the Iron Mountain and the Wiggins. The Car & Foundry Company lies between the Pioneer Cooperage Company and the Iron Mountain track, so that in order to get switching facilities, they have
345 to go over the property of the American Company. We are somewhat similarly situated, but on the opposite side of the street—opposite the west side of De Kalb street—and further south on De Kalb there is another spur of the Iron Mountain which comes up and connects with the Barton street track running into the Helmbacher Forge & Rolling Mills on the east side immediately south of us. That spur stops on our south line. The subject was broached of having that spur extended up the alley which bounds our place on the west. We could not think of that on account of the crowded condition in the tracks of the Helmbacher Mills. I understand their facilities are not adequate, and the tracks are continually in use with empty and full cars, so that our cars could not come over. That company is served by the Iron Mountain. Where we are, both sides of De Kalb street are used for manufacturing purposes, except the corner north of us. Our plant is about two blocks on a bee line west of the Iron Mountain and the Wiggins tracks, but to get to them we have to detour either to Barton or to Lesperance street. The Manufacturers Railway is on Second street immediately west of us. We are on the west side of De Kalb street, and that road is on Second street. Both Mr. George F. Moore, President of the Manufacturers Railway, and August A. Busch, Vice President, have

endeavored to secure our business as a patron of that road. They first solicited our patronage about a year ago and have kept up their endeavors. Mr. Moore has spoken to me a number of times of the service that his road would undertake to give us. He said
346 he expected to give us service that we were looking for and that we were not getting; that they expected to handle all of the business that was given to them in an expeditious and entirely satisfactory manner and not hold up cars or delay the delivering of cars as we have been experiencing with these other roads, the Iron Mountain and the Wiggins. My experience with the Iron Mountain has been exceedingly bad,—if I may use slang, I would say, "Rotten." Our work is all contract work. We are limited as to time to complete it. Empty cars are not always promptly furnished, nor can we always get a sufficient number. As a rule we have to place our orders for cars two or three days ahead of time, and very often we fail in getting them then. As a rule we placed our orders with the Wiggins people down at the yard, and sometimes through trunk roads over whose lines we are going to ship. We have made complaints to the Iron Mountain of the character of the service, incessantly. As far back as I can remember that is one of our troubles. We send our goods all over the United States and Mexico. We do practically no local business. We ship over all of the roads. We have no favorites, but we have this trouble almost constantly.

"Mr. Schnurmacher: What would you say, then, Mr. Pauly, as to whether you have a satisfactory and reasonable through route for the shipment of your goods to states * * * other than Missouri? * * *

Mr. Pauly: No, sir, we have not."

Cross-examination by Mr. Jeffery:

"Mr. Jeffery: Is that simply on account of poor service of the Iron Mountain that you say you haven't got a reasonable through route?"

347 Mr. Pauly: Yes, sir; the Iron Mountain and the Wiggins, just as much one as the other because we deliver to both.

We load on the Iron Mountain by team. We have not given any business to the Manufacturers Railway because we have no switch of theirs, and I don't know that they have any depot to receive anything.

Cross-examination by Mr. Wood:

I don't know how far we are from team tracks of the Manufacturers. I don't know whether they have public team tracks in South St. Louis. When Mr. Moore solicited our business he did not tell me that they had some public team tracks that we could use. When he spoke to me he spoke about putting in a switch. He did not solicit business for his team tracks. He did mention about them putting up a depot, a less than car load depot up there near Park avenue, and I told him that he would get some of our smaller shipments if he had those facilities. But, I do not remember that

he said he had any public team tracks. If he had public team tracks we would be using the Manufacturers Railway instead of the Wiggins or the Iron Mountain, if his connections and service would permit a delivery of stuff to the other roads. If I knew that he had public team tracks I would deliver some of our business to the Manufacturers Railway on those tracks. I would not do it unless the outbound carrier or the Manufacturers Railway absorbed a charge. In other words, we could not afford to pay them anything that we would not pay somebody else. As it is now shipped
348 over public team tracks or the Wiggins or the Iron Mountain, we do not pay any switching. It is absorbed. And if we use public team tracks of the Manufacturers Railway and their switching charge was not absorbed, we would stop using those tracks. When Mr. Moore solicited our business he said nothing about furnishing cars, but he said he would furnish the service that would be satisfactory. That certainly would mean cars. I understood that he had the facilities to get the cars whenever he said he would have them. Our stuff could be loaded in beer cars. We do not load it much in beer cars. We do put it in furniture cars.

Cross-examination by Mr. Stone:

When we located where we are now, in 1876, the Iron Mountain was running along there on a trestle work. The nearest point on the Iron Mountain to which we could deliver our product would be Barton street, and the Iron Mountain tracks. That is three blocks from our factory, by team. We hire teams to haul our stuff. We are just a block from the Manufacturers Railway. When Mr. Moore spoke to me it was in connection with supplying us with a switch, but I have always tried to find out how he was going to get in a switch to our place, and he stated that he took the matter up and when he got to that point that he could talk definitely, he would then come and see us and discuss the other part of the matter, i. e., the matter of rates and so on, because we never discussed rates. Simply a case of being prepared to handle our business if we would give it to them on an equal footing with anybody else doing
349 a similar business. I did not understand from the talk I had with Mr. Moore that we were to pay any allowance per car to the Manufacturers Railway Company, and I did not think he understood it that way. I believe he intended to give the same service, as far as that was concerned, that we could expect from any other source. It was not discussed that we were to be charged $2.00 per car.

"Mr. Stone: You would not patronize that railroad if any charge was made?

Mr. Pauly: We pay that much in case of other similar service now.

Mr. Stone: You would be better satisfied with what you already have?

Mr. Pauly: As far as cost would be concerned, yes. But we would like to get better service too, if we could."

Redirect examination by Mr. Schnurmacher:

In our business we are shipping about two thousand cars a year, and probably receiving that much from the east, from the Iron centers. Our total in and out shipments amount to approximately four thousand cars a year. Our in-shipments are about twice as much as the out, because our product is entirely made from the steel, and the raw material comes from the steel centers in the east. I don't know what our business was when it began. I don't think they shipped over fifty or seventy-five cars a year. Our plant has been enlarged from time to time during the past thirty or thirty-five years, notwithstanding transportation facilities in that locality.

350 Recross-examination by Mr. Jeffery:

It may be that it would be cheaper for us to pay $2 a car to the Manufacturers Railway now than to team to the Iron Mountain, as a matter of economy. If they put in a spur track and we paid that $2 per car, it would be cheaper than our present method, because it costs us more than $2 a car to haul the stuff. It is slower, too.

JOHN C. SCHROETER, testified:

I am in the coal business. Our office is at 2300 Miami street. We have four coal depots in South St. Louis. We have one yard on the line of the Manufacturers Railway Company on Dorcas street, east of Broadway—two tracks. It is considered a good yard. We also have a yard on the Iron Mountain at Miller street. We do not have any fixed room at Miller street. We use the track up there where we have our office, and at times if the track is not available, we have it switched to some other track. The most convenient yard for our business, where we do most of it is at Dorcas street. Most of our railroad business is in-bound matter. We operate our own mines on the Baltimore & Ohio, about forty miles out, at Breese, Illinois. The biggest part of our coal comes from those mines. I understand about the recent changes in tariffs by which the $2 switching charge is added to the rate on the Manufacturers Railway. We do not pay any switching charge in addition to the St. Louis rate for delivery in our yard on the Iron Mountain at Miller
351 street, but we do on deliveries at our other yard at Dorcas street.

"Mr. Cassoday: What difference does that make to you in your business, if any?

Mr. Schroeter: It just makes that difference, of the charge that we have to sustain, that we would not have to sustain anywhere else when it comes to doing business, as we have to do it, on a very close margin."

Coal is a very sensitive commodity. We have to figure it very close, and it of course makes itself felt. So far as I know, the switching rate on coal throughout the city, to industries located on the lines of different railroads or coal companies is absorbed by all the other railroad companies. For delivery at our yard on the Manu-

facturers Railway, it costs us $2 per car more than it does practically any other place in the City of St. Louis. There is no way in which we could operate our yard at Dorcas street without paying this $2 switching charge, or without the service of the Manufacturers Railway. The only other way in which we could get our coal would be to go further east to do it,—and the point of delivery would be on the Iron Mountain at the foot of Dorcas street, three squares from our yard. We could haul it by a wagon but there is a fairly steep grade.

"Mr. Cassoday: Well, what would be the cost per car of hauling up there by wagon for coal? Would it exceed $2?

Mr. Schroeter: I will have to explain it a little, this way: Take a car of coal and ship it to the Iron Mountain, or take a car and ship it to Dorcas street. Of course this car at Dorcas street would cost $2 more than at the Iron Mountain. When it comes to hauling
352 out, that is just a question of where I have to haul it. In some cases I am able to get a little more for hauling the coal, in other cases less, and in competition that means hauling rather cheap at times, and of course, as I said before, this $2 is in the way when it comes to placing a car of coal on that track, and of course it adds that much to the cost of the coal in making deliveries."

In hauling coal by wagons from the Iron Mountain to our Dorcas street yard, we would have to cross numerous railroad tracks and switches. They are the Iron Mountain tracks. None of the Busch family are interested in my company in any way.

Cross-examination by Mr. Jeffery:

We do no business with the Anheuser-Busch Brewing Association. We have four yards, one on the Manufacturers, and two on the Iron Mountain, one of which is at the Lemp switch at the end of Zepp street, where we get our coal up to Lemp's switch by Lemp's cable, for which they charge us, I think, $2 a car. I don't think that is high for the services they render, because we have a yard that is a good bit into our territory, besides it has a very steep grade and next to impossible to haul coal from that point any other way. Our other yard on the Iron Mountain is at Miller street. There we do not pay any switching. It is more economical to pay $2 to the Manufacturers Railway to haul that coal for us than to team it,—I mean per car load. But, we cannot stand $2 any more one place than another. We are paying it at Lemp's.

"Mr. Jeffery: It is not unreasonable there, you just testified. Would you think it would be more economical to team than to pay $2 a car?

353 Mr. Schroeter: The fact is that in the many years we have been doing business on the Iron Mountain we have found that we did not have the railroad facilities we should have had to do our business, and it became a necessity to find some other quarters whereby we could do our business. We could not very well afford to pay the extra charges, but we thought it necessary to find some way where we could handle our business."

I think we handle approximately seven thousand carloads of coal in our four yards, a year. About one-third we handle through the Manufacturers Railway.

Cross-examination by Mr. Stone:

We handle that one-third at Dorcas street. We are now paying the Manufacturers Railway, I think, $2 a car on our coal at Dorcas street. If I remember right the switching charge was absorbed for a time. I do not remember when we began to pay it. It is about three blocks from our Dorcas street yard, to the nearest team track of the Iron Mountain.

Redirect examination by Mr. Cassoday:

At the Zepp street yard, the $2 charge that I said I paid the Manufacturers Railway, and which was not absorbed, was not for any services connected with bringing coal from our mines and delivering it to us at our yard. It was for delivering it for our convenience after we had put it in our yard, and then ordered it out.

354 Recross-examination by Mr. Wood:

Lemp's switch is the destination for the coal on the Iron Mountain. The grade is very steep, and it is just a case of handling what we can under these circumstances. The cable takes the coal up. They pull it up there in the car. It is the same service that the Manufacturers Railway performs, but not the same case. We have been at the Dorcas street yard on the Manufacturers Railway about two years. There was a time when we paid $2 a car for switching. Never any more than that.

FRED A. GERBER testified:

I am in the lumber business, with Fidel, Ganahl & Co. I am the vice-president. Our yard is located at 3323 South Broadway, on the line of the Manufacturers Railway, but on no other line. We have been on that line one year, since the track was first run into our property. We have made an extension in the way of our business by extending its facilities,—about trebling them, and have invested additional capital in it, increasing to $150,000 from $50,000. We have also put in facilities at our yard and expended money in extensions,—$200,000 worth. The reason for our extension was because we were able to compete with other bigger yards since we had the Manufacturers Railway in there, on an equal basis. The extension was made possible because we were able to meet competition on an equal basis. The service rendered us by the Manufacturers Railway helps in our business, which has trebled. The service given
355 us by the Manufacturers Railway is adequate and satisfactory, and has been during the time we have been located there. We are six blocks from any other line of railroad. If you eliminate the Manufacturers Railway, the nearest point from which we could receive and make shipments would be at the foot of Cherokee street,

six blocks away. We would have to haul by wagons up a very steep grade, and across the Iron Mountain. It would be expensive hauling. I know of the discontinuance of the absorptions which made effective that $2 switching charge for the service on the Manufacturers.

"Mr. Cassoday: What effect has it had or will it have upon your business, to be required to pay $2.00 switching charge, in addition to the St. Louis rates?

Mr. Gerber: It will work a hardship of $2.00."

Lumber is a very sensitive commodity. It will render us unable to compete with lumber concerns in that section of the city. We do not pay switching charges for deliveries on other roads except the Manufacturers Railway. I don't know of any switching charge in addition to the St. Louis rate for delivering at lumber yards located on any other lines anywhere in St. Louis except the Manufacturers Railway. There is another lumber yard on the line of the Iron Mountain in South St. Louis, namely, The St. Louis Lumber Company, which has a very large yard served exclusively by the Iron Mountain. They are competitors of ours, and they get their lumber at the St. Louis rate without additional switching charges. The additional charge of $2 a car does embarrass us in our competition with that company. With the amount of cars we handle, it would
356 be a serious matter, and we could not compete with them successfully in business.

Cross-examination by Mr. Jeffery:

We pay a great deal of freight to the railroads,—to the Iron Mountain. The average per car is over $100 a car. It depends on where it comes from,—perhaps $100 a car. There are some cars we pay $50, and some we pay $500. We have been on the Manufacturers Railway a little over a year. The track was built right into our industry. Before they built there, we were not located just where we are now. We were then across the street, and hauled lumber to our yard. Since they built there we have not hauled in at all. We now pay $2 a car. But, I don't know whether we have actually made the payments. We sell our lumber by the thousand feet. In an average car of yellow pine from the south, there are 15,000 feet. That $2 a car effects 1,000 foot a little over ten cents. The present rate on yellow pine is $20.

"Mr. Jeffery: Do you think that in the marketing of that lumber, that fifteen cents makes a great deal of difference?

Mr. Gerber: I know it does, yes, sir."

The average freight rate on the average car of $2 a car certainly does make a difference.

Cross-examination by Mr. Stone:

Our business has been down there since 1872, but about a year ago we put an addition to our yard over on the Manufacturers Railway.

Prior to that we hauled lumber from the Iron Mountain up
357 to our yard. The average haul cost was $8 a car. We prospered in business, and increased our business somewhat, notwithstanding our hauling.

"Mr. Stone: It would have been better if you had located down on the Iron Mountain and not have to pay out that money to the teamsters or to the Manufacturers?

Mr. Gerber: No, we would be down at the foot of the hill. We would have to haul the lumber up the grade.

Mr. Stone: I mean if your establishment, your lumber yard, was located down next to the Iron Mountain track, it would have saved you that extra haul by rail or by team?

Mr. Gerber: All the lumber we deliver in the city would have to be hauled up the hill."

We saved that by getting up on the hill. We deliver it, and it would be a less expense to deliver it from a point on the hill than it was from the bottom. Formerly we paid nothing to the Manufacturers Railway for delivering the lumber to our establishment. We have actually paid them nothing since March 1st. I suppose they are charging it up to us, and they expect it to be paid. We have received about three hundred cars, I think, since the 1st of March, 1910. We average about twenty-five hundred to three thousand cars a year. We have increased our business three times since we have had the Manufacturers Railway road coming in there.

"Mr. Stone: If you can get it hauled at $2 a car, that is all you want, isn't it? * * * That is a satisfactory rate to you, isn't it?

Mr. Gerber: Two dollars, no sir. * * * We can't compete with other yards in that line of business if we have to pay that $2. * * *

358 Mr. Stone: You may have been unfortunately located where you have.

Mr. Gerber: There may be something in that. I do not see it very well."

Cross-examination by Mr. Wood:

We get all our lumber over the Manufacturers Railway. In April, 1910, I think, we got about two hundred cars over the Manufacturers Railway. In speaking of three thousand cars, I was not trying to say that the cars would be all on the Manufacturers. We have another yard on Gravois avenue, four miles from this yard. We make deliveries wherever the building is being constructed, the closest point to the building. We deliver lumber from public team tracks of some railroad instead of through our yard if it happens to be away out in that north end or far from our yard. We only use this yard for a part of our business, but we carry a large stock there. I suppose we did handle only seven hundred and thirty-four cars into that yard in 1910. Our other yard is located on the Missouri Pacific. I think it is out of the switching limits, but on some lumber we pay switching charges. The St. Louis Lumber Company, with which our yard competes, is about ten blocks away from us. It is at Sydney or Victor street, and has an Iron Mountain connection. We do business in that district and we pay $2 a car more than the St. Louis Lumber Company for delivery of lumber in our yard.

"Mr. Cassoday: Mr. Moore was asked yesterday to furnish a statement of the number of movements that were designated here as 'inter-

work' movements. He has prepared a table showing such movements."

359 The table was copied into the record as if read, showing inter-work switching from April 30, 1910, to May 1st, giving the number of carloads moving between points in the same industry during each month, and the totals. It shows such movements for Anheuser-Busch Brewing Association, total of 9,249 loads. For Adolphus Busch Glass Works, 931 loads. Total 10,180; an average per month for the Anheuser-Busch Brewery of 771, and for the Glass Works, 78.

It was agreed by counsel that the large blueprint promised by Mr. Moore being a copy of the blueprint which he identified and as referred to in the lease Exhibit 22, shall when filed, be marked Exhibit 22½.

GEORGE F. MOORE, recalled, testified:

Cross-examination by Mr. Stone:

"Q. On yesterday, Mr. Moore, I showed you a statement purporting to be of loaded cars forwarded and received by the Manufacturers Railway showing the percentage of business handled by the Anheuser-Busch Brewing Association, from February, 1909, to December, 1909, both inclusive. You were not then prepared to say whether it emanated from your office, or whether the statement was correct?

Mr. Moore: That did not emanate from my office."

I cannot tell you whether it is correct. The statement was not made by the Manufacturers Railway Company or any of its officials or any of its employees, as far as I know. I did make a statement very similar to that, of which they made a copy, and I

360 handed them out to anybody that wanted them; and from that statement that might be made up, and made up correctly so far as I know, but I don't know whether the statement that you have is a copy of that or not. I cannot say.

The statement referred to by Mr. Stone was then offered by him as Defendant's Exhibit 6.

"Mr. Stone: I showed you also on yesterday, Mr. Moore, a map showing the lines of the Manufacturers Railway in red the lines of the St. Louis, Iron Mountain & Southern Railway Company in green, and the lines of the Wiggins Ferry Company in brown and white dotted lines, and accompanying that map and attached to it, what purported to be an analysis of the terminal facilities in territory contiguous to the Manufacturers Railway at St. Louis, Missouri, and asked to have it marked as an exhibit with your testimony, and you expressed a desire, to take it home with you last night and have your engineer look over it, so that you could see the accuracy of the analysis referred to or its inaccuracy, and report about it this morning. Now, I ask you to point out, if you are able to, any inaccuracies in that analysis referred to as to the location of the different establishments, buildings, and so forth, therein set forth in al-

phabetical order, if you found any; and if you did, to point out the differences between actual conditions and that analysis.

"Mr. Moore: Also as to whether or not the trackage shown there belonging to the respective companies——"

"Mr. Stone: You are at liberty to make any statement you desire now, either about the map or the analysis attached to it."

Mr. Moore: The matter submitted is voluminous, and the time we have had to examine it has not been sufficient to definitely locate all of the things that might be considered an inaccuracy, but I have found some inaccuracies which I will point out, but there
361 may be others that we have not discovered for lack of time.

On the map referred to, we find that the Manufacturers Railway tracks appear as terminating at Convent street on the north, while in fact they terminate at La Salle, one block north of Convent. I think that block was not completed until some time early in March, 1910. La Salle street is where the green lines run east and west at building marked No. 10. Our tracks run along the east wall of that building the same as these green tracks run along the north wall of that building. On the map they divide Fairbanks & Co. into three companies or into three divisions, I don't know which unless you wish to say that we do not serve as many divisions as they do,—wish to minimize what we do serve. Then our switch into Fairbanks marked "storage,"—it is the same class of storage as the green track serves, which serves the oil storage in part, and we serve the grease storage in part; then we have other stores like rosin, and so have they, on that track. Besides the industrial index indicates we do not serve this outbound house of Fairbanks between Convent and La Salle, whereas we have just as much service to that practically as the Iron Mountain. The Fairbanks plant of which I have been speaking is marked on the map, "No. 10, 12 and 13." No. 14 is Bradbury Marble plant. My impression is that the tracks of the Manufacturers have been constructed north of Lesperance street, although I cannot testify definitely as to that. The map does not show it quite as far north as Barton street. My impression is we have run as far north as Lesperance street. The tracks
362 shown on the map as Iron Mountain, in green, laid from the south side of Arsenal street west, to industries marked 131-132, namely, St. Louis Basket & Box Company, and St. Louis Cooperage Company, is not owned by the Iron Mountain, as indicated in green, but is owned by the Manufacturers Railway and should be indicated in red. That change resulted from the contract filed as an exhibit, I don't remember its date. I think the matter was consummated since February, 1910. The American Brewing Company located between Lynch and Dorcas streets on the west side of Broadway is not shown as an industry served by the Manufacturers Railway. They are using the public shipping yard located on the east side of Broadway between Dorcas and Pestalozzi streets, I think, exclusively. They are both shipping and receiving in that yard. The American Brewing Company is a large plant in the block just north of our Dorcas street line and west of Broadway, i. e., in the block north of the one on which an industry is indicated on

the map as No. 110. They are on *the* both sides of Broadway. Instead of being located in the block just south of Dorcas at the point indicated as No. 110, they are located in the block immediately north of the Dorcas street track and west of Broadway. They are on both sides of Broadway, in the block between Dorcas and Lynch.

The spur track shown on that map as the Iron Mountain track, leaving the Iron Mountain track at Second and Park avenue, and extending west to Third street is not an Iron Mountain track
363 because the ground is not theirs, and the contract has been executed by which they agree to sell that track, and the reason we have not bought it is because we cannot agree on the value of the scrap. The track was there in February, 1910, but not used by them, and could not be used by them because I have it.

The Manufacturers Railway has a track for private use, to the Nooter Boiler Works, at the corner of Second and Park, and not shown on the map because it was put in after the date of the map. The Nooter Boiler Works is now being built. It is unfinished. The St. Louis Pretzel & Baking Company are right across the street from our Park avenue track on the little triangle between Rutger and Merchant and Second street, and I think use the Manufacturers Railway exclusively. It is marked No. 17 on the plat. Adolphus Busch Glass Works marked No. 118 is served exclusively by the Manufacturers Railway Company, and the Iron Mountain cannot serve it because they have no right of way over the property of the glass works. There is a track in there built when they were operating the Manufacturers Railway, and they used it, but they cannot do it any more. The tracks were there in February last, but not operative. They were on the right of way of the Manufacturers Railway. They could be made operative if the Manufacturers Railway would allow them to be. They ceased to be operative as soon as I saw that they were there, I don't just remember when. I don't know whether the Iron Mountain laid the rail or the Manufacturers Railway, but I am prepared to say that the right
364 of way belongs to the Manufacturers Railway, under the lease in evidence. The Iron Mountain cannot serve the Glass Works except by running over my property. There is a blank wall in the way.

Your map shows one team track at Merchant street. There is actually a double track from Second street along Merchant street, south side, to the Rutger street line. The two tracks shown there are too short. We also have a double track instead of a single track from the south corner of Fourteenth street to Convent street. The American Brewery is served by the Manufacturers Railway, and not shown on the industrial index. The Brueckmann Company on Second and St. George is served by the Manufacturers Railway by a delivery track at Second and Dorcas, about three squares away. The industry marked No. 94 is served by the Manufacturers Railway, at a point on Second street nearly half way between Lynch and Dorcas. E. B. Hill & Brothers, Second and St. George, are served on the same track. The St. Louis Rattan Company is served by the Manufacturers Railway on a team track. It could also go to

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another team track if it wanted to. The Standard Furniture Company likewise; Stute & Co., Union Brewing Company, and Waldstein Lumber Company likewise.

Those are all the exceptions that we noted in the time we had to make the examination.

"Examiner Hillyer: I still request that a correct copy of a map drawn on the lines of Judge Stone's, that is correct in accordance with Mr. Moore's ideas, be filed with the record in this case for the information of the Commission."

365 Counsel for complainants promised to furnish it.

(This map was filed later, not marked as an exhibit. It is the large blue print showing in color the tracks of the three railway lines, etc.)

The map produced by Judge Stone was thereupon introduced as Defendant's Exhibit No. 7.

"Mr. Cassoday: In connection with the map that the Examiner has asked us to prepare along similar lines, I just want to call attention to the fact that on yesterday Mr. Moore was requested to furnish a plat showing the location of the different plants or buildings belonging to the Anheuser-Busch Brewing Association, and the relative position of the tracks. Can't that be shown by this same plat, without the necessity of getting up separate ones?

Examiner Hillyer: Certainly.

Mr. Wood: I made the request for a map that would show the buildings of the Anheuser-Busch Company, the land of the Anheuser-Busch Company, and the tracks of the Manufacturers Railway. I do not see any reason why that should not be shown on that map. * * * I don't mean to bring that in, in the case."

NAGEL & KIRBY,
CASSODAY & BUTLER,
SCHNURMACHER & RASSIEUR,
Attorneys for Complainants.

366 I, W. W. Nall, Clerk of the United States District Court for Eastern Division of Eastern Judicial District of Missouri, hereby certify that the exhibit hereto attached is the original exhibit Abstract of Evidence, Docket No. 3151, Interstate Commerce Commission filed in Causes No. 4384-4385 of Manufacturers' Railway, et al., versus United States of America, et al., in said Court, which (under order of the District Court) is transmitted to the Clerk of the Supreme Court as a part of the transcript and record upon appeal in said cause certified as of this date.

Witness my hand and the seal of said Court, this 25th day of May, A. D. 1915.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled May 25, 1915. W. W. Nall, Clerk.]

367 Filed March 12", 1915. W. W. Nall, Clerk.

Before the Interstate Commerce Commission.

No. 3151.

MANUFACTURERS' RAILWAY COMPANY, ANHEUSER-BUSCH BREWING ing Association, Stecher Cooperage Works, Independent Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel Ganahl Lumber Company, St. Louis Cooperage Company, and Western Foundry and Sash Weight Company, Corporations, Complainants,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE Missouri Pacific Railway Company, The Wabash Railroad Company, Missouri, Kansas & Texas Railway Company, St. Louis & San Francisco Railroad Company, St. Louis Southwestern Railway Company, Louisville & Nashville Railroad Company, The Baltimore & Ohio Southwestern Railroad Company, Chicago, Burlington & Quincy Railroad Company, The Chicago & Alton Railroad Company, Chicago & Eastern Illinois Railroad Company, Chicago, Rock Island & Pacific Railway Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Illinois Central Railroad Company, Mobile & Ohio Railroad Company, Southern Railway Company, Vandalia Railroad Company, Toledo, St. Louis & Western Railroad Company, Chicago, Peoria & St. Louis Railway Company of Illinois, Corporations, and John C. Ramsey and Henry M. Merriam, Receivers of said Chicago, Peoria & St. Louis Railway Company of Illinois, Defendants.

Abstract of Evidence at Supplemental Hearings.

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Watson & Abernethy,
Schnurmacher & Rassieur,
Attorneys for Complainants.

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Abstract of Evidence at Supplemental Hearings.

Hearing of January 15, 1912.

Appearances.

Index of witnesses.

370 Index of exhibits.

Opening statements for the Commission, complainants, and defendants.

Evidence.

G. F. MOORE testified: I am president of the Manufacturers Railway Company and have testified before in this case and my testimony appears in the record which has already been made.

The Manufacturers Railway Company began to operate its property in the early part of 1909 as an operative company. Prior to that time it had been operated by the Iron Mountain under lease for more than twenty years.

The previous testimony in this case was closed in May, 1910. The cancellation of the allowances and divisions between the St. Louis

lines and the Manufacturers Railway Company, of which complaint is made in this case, became effective March 1, 1910.

We are now operating under tariffs pursuant to which the Manufacturers Railway Company receives out of the St. Louis rates certain divisions and allowances. These tariffs became effective between July 15 and August 1, 1911. The Commission vacated certain suspension orders as of July 15, 1911.

The reparation claim of the Manufacturers Railway will begin March 1, 1910, and will end the middle of July, 1911, approximately. There were exceptions on some business which was not cancelled as of March 1, 1910, owing to the St. Louis & Southwestern having two items in their tariff affecting the interchange business with the Manufacturers Railway Company. One of these items was cancelled and the other one was in. This escaped the Revising Committee
371 and that rate remained effective up to some time in August, 1910, when they withdrew that rate, and we then had no further tariff in effect. These tariffs which were cancelled by the lines March 1 covered all interchange business, inbound and outbound, with the exception of the Cotton Belt. The reparation period on account of the Cotton Belt begins August, 1910. Nearly all of the tariffs were reinstated about the same date, to-wit: July 15, 1911.

The Manufacturers Railway Company operates under a local tariff and under tariffs published by other lines which are called "absorption tariffs". The local tariffs have three rates, a rate for weighing cars, a rate for what is known as interwork switching, and a compulsory rate, a maximum charge of $2 for intra-city movement. The absorption tariffs effective prior to March 1, 1910, provided for a scale of rates allowing the Manufacturers Railway Company, under conditions outlined in the tariff, $3.50 a car on certain freight received, $4 a car on another division of freight received, and $5.50 a car on freight forwarded.

When the roads cancelled the old tariffs, they assigned as a reason for doing so that they had been led to doubt the legality and the reasonableness of the absorption that they had been providing for, and I immediately began, by correspondence, to try and get an expression from the different roads as to the reasonableness of the rates, with a view of adjusting them, if possible, to meet their requirements. I failed to get an expression from any line, although we addressed both the executives and the traffic officers, and then began a quiet campaign among the different railroad representatives, seeing them one at a time, with the sole purpose of arriving at what might be wrong with the rates, and I found that their opinion, when
372 crystalized, seemed to be directed against a scale of rates rather than the aggregate amount of money that the Manufacturers Railway Company received for performing the service.

I then conceived the plan of making a flat rate basis on investigation as to cost of handling our business and somewhat on the charges which were made for similar services by other lines, and proposed to them a $4.50 rate in and out on all commodities, whether the car was loaded heavy or light, with pianos or beer—a flat rate—and that rate was generally conceded to be fair.

My negotiations with the representatives of the St. Louis lines relative to fixing the present rate were almost wholly verbal, writing not being a success as I could not get them to express themselves.

The amount of our allowances at this time is the flat rate of $4.50 on all business excepting coal. The tariffs when formulated with that rate were adopted. We did have an allowance of ten cents a ton on coal. This was one thing that helped me to fix $4.50 as a fair and reasonable rate. For years the Terminal lines of St. Louis had received ten cents a ton on coal, a commodity that is always handled as cheaply as possible by carriers. I found that my average earnings on coal at ten cents a ton amounted to $4.12 a car, and not only for the Manufacturers Railway Company, but for all lines handling coal as terminal lines in St. Louis. And if, on the lowest class commodity, $4.12 is deemed a just and reasonable rate, it appeared to me that on the higher class commodities, where the railroads were exacting a higher rate, that $4.50 would not be unreasonable. Taking all other rates into consideration, in my opinion $4.50 a car was a fair average rate.

In respect to coal, the division under the tariffs now effect-
373 ive is the same as was in force under the former tariffs which were canceled March 1, 1910.

There has been a reduction of the rate for the weigh movement made necessary because the Iron Mountain tariff named a rate of 25c. a car. Our old tariff named a rate of 50c. a car. We reduced our rate to 25c. because the Iron Mountain was weighing at that rate, and to meet their competition. The rates under the tariffs now effective are the same as the rates under those canceled March 1, 1910, on all inter-work service save the rate for the weigh movement.

We are claiming reparation on the basis of the tariffs effective February 28, 1910, these being the tariffs canceled March 1, 1910.

The Manufacturers Railway Company has rendered to the Interstate Commerce Commission all of its annual reports to date. These reports were correct and in all details conforming to the requirements of the accounting circulars issued by the Commission, save that the report for the fiscal year ending June 30, 1909, was of necessity compiled largely on estimates and from information that had to be obtained from records that were not kept in accordance with the Interstate Commerce Commission forms, and from such records as were kept by the St. Louis, Iron Mountain and Southern for a part of the fiscal year, so that the reports, as a whole, was not as accurate a report as I would like to have rendered, but the conditions were outlined to the Commission and they were given a fair statement as to how that report was made.

Since that time, with the exception of that period—after March 1, 1910, our reports have been absolutely correct in detail. The only exception I would make is as to the revenue, and the disposition of a certain interest charge. I had to have some basis on
374 which to report my final transaction, and the conditions were unique, so I based my report on rates embodied in the tariffs which were canceled as of February 28, and so informed the Com-

mission that I reported on that basis monthly and annually; and in addition to that there was a question about the disposition of certain interest on capital invested by the Manufacturers Railway for extension purposes, part of which was not used in actual operation. It is a question between accountants and possibly others as to where such interest should go when the company is an operating as well as a constructing company. Those are the only two points I can remember but what were absolutely correct in the annual reports of 1910 and 1911.

The item referred to relating to revenue has to do with our reparation claim. We have treated our claim for reparation in our accounting as though it were revenue earned, although in fact it was not collected, but is an outstanding account which forms the basis of our claim for reparation, and our books so show it. We computed this revenue on the basis of tariffs which were effective, and we reported the revenue on the basis of those tariffs and made an individual charge for each line against which we are asking reparation for each movement.

We have approximately 66,000 items in that record and they are all charged at the tariff rates which were effective up to March 1, 1910.

We have something like $300,000 invested in real estate and surveys and other necessary expenses for an extension of the Manufacturers Railway, all of which is not used in the present operation. I ought to be permitted to carry that interest as an operating charge, but knowing that it would be disputed, I segregated that and am carrying it as a construction charge. At present my books
375 show that this interest is not carried as an operating cost, but as a construction cost or property investment.

Our first report filed with the Interstate Commerce Commission was as of June 31, 1909. I do not know how the road was reported by the St. Louis, Iron Mountain & Southern.

The Manufacturers Railway Company took over the operation of its line upon the termination of the Iron Mountain's lease, January, 1909. I went to the Manufacturers Railway February 19, 1909.

"Mr. Stone: When did the Iron Mountain's lease expire, Mr. Moore?

Mr. Moore: It expired some few months before—that is the written lease—but by oral consent it was carried up to the time the Manufacturers Railway Company began its actual operation.

Mr. Stone: That was January, 1909?

Mr. Moore: January, 1909.

Mr. Kirby (to Mr. Stone): Would you like the exact date? That is exactly recorded in the previous hearings, however. There were two ten-year leases from the Manufacturers Railway Company.

Mr. Moore: Yes, sir.

Mr. Kirby: To the Iron Mountain, were there not?

Mr. Moore: Yes sir.

Mr. Kirby: The second one of these two expired in 1908, did it not?

Mr. Moore: Yes, sir; that is my understanding.

Mr. Kirby: Then between the period when that lease expired there was a year or a portion of a year during which the Iron Mountain still operated as a tenant at will without a written lease?

Mr. Moore: I so understand it."

376 I have given personal attention to the operating cost as set forth in our annual reports to the Commission. I believe I am thoroughly conversant with each item. This case has compelled me to think of new things and arrive at results in many ways in order to meet this final hearing of the case, so I have had some additional experience on account of this case that had never been necessary before.

I have made inquiries for the purpose of comparison between the results the Manufacturers Railway Co. obtained in the matter of cost of operation, and the results obtained by other carriers rendering terminal services. I have exchanged views with other experienced railroad operating men on the amount of cost and reasonableness of cost of operation. I have talked with the Iron Mountain, Wabash, Rock Island, Terminal Association and friends of mine in Detroit and Chicago to arrive, if possible, at the cost per car in handling terminal freight business.

I have made an extensive inquiry and as a result my judgment is that the costs at which the Manufacturers Railway Company has in fact operated are reasonable and as economical as are consistent with the service demanded of that railway.

At the former hearing I testified as to cost of operation and fixed charges and average cost per car as outlined in our Exhibit 61 as printed on page 91 of the first record in this case. That exhibit showed the cost per car from an operating point of view basis on not only cost of operation, but also fixed charges, using the number of cars interchanged only without considering the inter-work movement, the weigh movement and the intra-city movement.

377 My present viewpoint with these movements in mind is that our operating cost is just a little bit less than shown in this exhibit here (Exhibit 61), partly on account of the basis used, but largely on account of the increased volume of business that we have been handling for the period ended June 30, 1911. Exhibit 61 was correct so far as it went, but based on all the elements which I am now able to furnish as facts in this case it was not complete for the purpose of determining the actual cost of operation.

I have prepared a new cost statement since the May hearing and have same before me now, showing actual results of operation for the fiscal year ending June 30, 1911. (The paper was offered and identified as Complainant's Exhibit No. 1.)

In a general way I have prepared this statement by securing the number of exchange loads with our connections, the number of interwork movements made, the number of intra-city movements under our franchise, and the number of movements of cars for weighing, this giving me the total number of cars handled, to-wit, 61,846.

"Examiner Mackley: Right at that point, for the purpose of this

record, just tell what these different movements are—these weigh movements?

Mr. Moore: The interchange movements are such movements as involved the moving to either the St. Louis, Iron Mountain & Southern or the St. Louis Terminal Railroad Company jointly, and consist in delivering to them or receiving from them traffic in cars.

Mr. Kirby: And those are the movements on which under tariffs effective you get divisions or allowances?

Mr. Moore: For that period we got divisions or allowances on all excepting approximately 7,000 cars, which came to us with no tariff division for switching and on which they charged $2 in excess of the St. Louis rate.

378 Examiner Mackley: Those were all outbounds from St. Louis?

Mr. Moore: In and out.

Mr. Kirby: They were moving in interstate commerce, were they not?

Mr. Moore: Why, the vast majority of the business, 95 per cent I should think, is interstate commerce.

Examiner Mackley: You haven't separated the interstate?

Mr. Moore: No; very little state movement.

Mr. Kirby: Now, will you state the number of the interchange loads which entered into the detail?

Mr. Moore: 52,281."

We moved 7,104 cars from one point of the Anheuser-Busch Brewing Association to another point of their plant or plants. That is an interwork movement provided by our tariffs at $1 a car.

"Examiner Mackley: That is for the Busch property alone?

Mr. Moore: That is the only interwork switching that we are called on to do, because they have such a detached plant that they have to go from one to the other; but the other people do not have interwork switching. No other industries on our line have plants between which we do interwork switching. The American Car & Foundry Company has interwork movements, it being in our neighborhood, and with it we have track connections, but the services are rendered by the Iron Mountain, I believe, on contract, the character of service rendered by the Iron Mountain being similar to the service that the Manufacturers Railway Company renders the Anheuser-Busch and which we have entitled interwork move-

379 ments. The intra-city movements are from one part of our road to another part of our road, but they are very few, to-wit, 167, the charge being fixed at $2 a car under our franchise ordinance, No. 22,025.

Examiner Mackley: That is from a point of the Manufacturers Railway Company to another point of the Manufacturers Railway Company?

Mr. Moore: It is.

Examiner Mackley: Those are independent shippers—are any of those Busch shipments?

Mr. Moore: It may have some of that 167.

Examiner Mackley: Wouldn't their shipments all be included in the interwork movements?

Mr. Moore: No, sir. It just comes to my mind that is just the same as ice to the Independent Coal & Supply Company at Rutger street, and they pay me $2 on that because that is a city movement.

Mr. Kirby: Do they pay for that kind of movement just as other shippers pay for a movement of a similar character?

Mr. Moore: They pay just exactly according to tariff; yes, sir."

We have weighed 2,294 cars at 25c. a car as per our tariff. This weigh movement is the same as an interwork movement, usually either a primary or a secondary move in the preparation of traffic for delivery to a consignee or for forwarding to a consignor. It is an added movement, sometimes before the complete car can be delivered, at other times before the car can be forwarded, and most of these movements originate in that way, as preparatory for outbound or inbound shipments. It is for the purpose of weighing the load. The interwork movement is for the purpose of thoroughly discharging the car, and is similar somewhat to the set-out charges
380 that railroads make when they are distributing a car from one destination to another with the privilege of stopping in transit to partly load or partly unload at some station. These items constitute the details which make up the detail loaded movements as shown in Exhibit 61 and Exhibit No. 1, to-wit, 61,846 cars.

"Examiner Mackley: First, whose shipments are these weigh movements?

Mr. Moore: All of our customers.

Examiner Mackley: Are some of those Anheuser-Busch's, too?

Mr. Moore: Very likely.

Examiner Mackley: You did not segregate those?

Mr. Moore: No, sir.

Examiner Mackley: How many of them?

Mr. Moore: Well, proportionately I should say about in proportion to the amount of their business handled as to the other business handled. On a tonnage basis about 76 per cent, possibly; on a per car basis, about 78 or 79 per cent."

The movements described in Exhibit 1 include all the movements of every kind which we rendered during the fiscal year ending June 30, 1911. In making up the totals under each sub-heading in Exhibit 1 I have followed the usual practice of accounting under the accounting rules established by the Commission, and these items are correct.

By dividing the operating expenses by the total number of revenue moves made as shown in Exhibit 1, I arrived at the average cost per car, to-wit, $2.4488. I arrived at the average tax cost per car by dividing the total amount of taxes paid ($6,956.48) by the total number of revenue movements.

Sheet No. 2 of Exhibit 1 is a copy of the tax receipt and
381 covers the calendar year of 1911, as taxes under the Missouri tax system are paid for the calendar year instead of for the fiscal year, and the taxes paid previous to this were something over $9,000 or $10,000. But take it year in and out, I think it is fair to

show one year back. If I had divided my taxes, taking part of the 1910 tax and a part of this year's tax (1911), my cost per car would have been somewhat in excess of $0.1125, because we did not succeed in getting the taxation lowered until 1911. I mean that if I had taken six months at the rate I had paid for 1910, and six months at the rate I paid in 1911, which would have exactly covered the period of this statement, then my average per car would have been more than $0.1125, because for 1910 I paid more taxes than I did for 1911.

The track item of $24,000 covers the property leased from the Anheuser-Busch Brewing Association for railway purposes.

The $4,000 item covers a certain part of our river yard, the land being leased from the City of St. Louis for thirty years at this annual rental of $4,000.

This item of $24,000 for track is the payment made under the lease which is already in this record, but a new lease has been executed which is not in the record, this new lease being substituted for the former one, and copies have been filed with the Commission. The amount of the rental is not changed. The only change is to definitely state in words in the lease just the privileges we have enjoyed and our liabilities.

The item "Office and Miscellaneous ($1,454.99)" covers the money we pay for office quarters.

The item "Interest on Operating Capital ($6,106.36)" represents interest on moneys which we were forced to borrow with
382 which to operate the road, and included the interest on moneys borrowed with which to operate the road in place of the moneys tied up in our reparation claims, and in ascertaining the average cost per car on account of this item ($0.5749) I pursued the same method as I did in determining the other average costs.

Examiner Mackley: Six per cent interest?

Mr. Moore: Five per cent.

The principal heading in Exhibit 1, "Property Investment," explains itself.

The last item on page 1 of Exhibit 1, "Interest on property purchased and expenses incident to extension south of Utah street ($318,472.74) at 5 per cent, $15,923.64, average cost per car $0.2575", is the item which I have explained in the disposition of that interest.

These two items are the ones I wish to explain as to the possible propriety of my method of handling same in our annual reports to the Commission.

Exhibit 1 shows the average cost per car, taking into account not only the operating expenses but all other items of cost, and as shown in this exhibit, to-wit, $3.8736.

I have every reason to believe that this statement (Exhibit 1) is a correct picture of the actual results of operation as shown by the books of the Manufacturers Railway Company. I did not do the actual work connected with this exhibit, but it was done under my supervision and approval every month. I looked over the trial bal-

ances and did everything necessary to qualify me to say that the statement is correct; that is to say, all of the bills passed through my hands, I revised all pay rolls, I signed all vouchers, I signed all pay checks, and I go out and see what my employes are doing with their time and try to give the company honest supervision in
383 every way, and this average cost per car is the correct cost per car.

I believe it is equally applicable to a weigh movement, to an interwork movement and to an intra-city movement, or to a delivery to a connecting line. I believe one movement on the whole costs just as much on an average as another movement. In my opinion the average cost of $3.87 per movement is not only reasonable for the Manufacturers Railway Company, but is reasonable for any other switching line as a cost per car.

I base that opinion on what Mr. McChesney told me as to the cost on an operating basis for handling cars of the Terminal Railway, and I appreciate that we are probably the only company that can get the exact unit of cost for city terminal switching in St. Louis.

Mr. McChesney is the President and General Manager of the Terminal Railway Association of St. Louis. He said they had been spending quite a bit of money to arrive at the cost, but of necessity they were approximate results, and as near as he could determine, the cost per car in handling freight terminal business in St. Louis on an average basis was between $2.40 and $3, and he said he would be very glad for somebody to tell him just what it was.

Now as to the property investment, that can be determined by the records of the Interstate Commerce Commission, but on an operating basis it is costing Mr. McChesney as much or more than it is costing the Manufacturers Railway Company, and I believe we have a more difficult property to operate, for it is built to conform with the city grades, it has numerous street crossings, a multitude of switches and frogs and heavy sharp grades and curvatures. We have a
384 watchman to provide at the street crossings and everything is a maximum figure.

The item, "Maintenance of Equipment, $25,225.37" (Exhibit 1), is high. It includes the depreciation reserve for one thing, which all roads are required to set up. It is high because of the fact that heavy locomotives operating over tracks such as we have experience unusual wear and tear, and we try to keep them up in the very best possible condition. We have five locomotives of 78 tons, except one lighter engine. It is hard on equipment to operate over frogs, switches and crossings. It is hard on track upkeep.

The item, "General Expenses, $39,799.51" (Exhibit 1), might seem relatively high were it not for the fact that the general officers of the Manufacturers Railway Company attend to almost all kinds of business and their salary might, with justice, be proportioned through the agent's office and yard business and track department. As a matter of fact we are all general officers, with very few privates in the rank, so we have to do what work is done by subordinate officers that would be added directly through these different departments and not coming under general expenses.

Examiner Mackley: Mr. Moore, in your testimony as to the general traffic and work of the Manufacturers Railway Company you do not separate it in any case?

Mr. Kirby: We are going to offer a statement showing just to whom services were rendered and how much for each shipper.

Examiner Mackley: I do not know—in your opening statement you stated that you considered allowance and division should be made to all traffic—whether you intended to go into that?

Mr. Kirby: Yes, sir; as far as we can tell; we are
385 going to show every fact that can have any possible relation.

Examiner Mackley: In view of the report as to whether or not it was track facility service and if there is any distinction you will necessarily have to have the figures showing plant service and the independent service.

Mr. Kirby: I am going into that fully.

(Mr. Kirby: If there is no objection we would like to withdraw Mr. Moore and examine a witness who can only appear at this time and cannot come later in the hearing.

Mr. Stone: We have no objection.)

Mr. PHILIP W. COYLE testified:

I am Traffic Commissioner of the Business Men's League, which is an organization of business men of St. Louis, and has been in existence about fifteen years. It is the largest business men's organization in the city.

It may not have quite as many members as the Merchants Exchange, but aside from that it is the largest. It is not operated for profit, but for the exchange of information for the benefit of the business men, merchants and manufacturers of St. Louis, and I have been connected with it for over five years, and during all of that time have held my present position as traffic manager.

As traffic manager my duties are to look after traffic conditions in general, to see that there is a proper adjustment of rates concerning the traffic of the city, and to endeavor in every way possible to expedite the movement of shipments in and out of the city. My duties have brought me in touch with information concerning the traffic conditions and terminal conditions which exist in the city of St. Louis.

386 Prior to my connection with the Business Men's League I had had railroad experience. I began railroading in 1865 and continued up to five years ago, starting as a telegraph operator, station agent, general freight and passenger agent, purchasing agent, assistant superintendent, and latterly commercial agent and assistant general agent of the Wabash Railroad in this city. I began with the Erie Railroad, with which I remained about 16 years. Four years I was general freight and passenger agent and purchasing agent of what was then known as the Lackawanna & Pittsburg Railroad, and from there I went to the Wabash in 1862.

I am familiar in a general way with the traffic conditions which exist in the switching limits of St. Louis as to terminal movements,

and the nature of the movements which are made. It has been a part of the work which I had to do with the Business Men's League.

"Mr. Kirby: The record in this case, Mr. Coyle, shows that the Manufacturers Railway Company is now engaged in interchange movements with the St. Louis lines under a flat rate paid to the Manufacturers Railway Company of $4.50 per car on all interchange business, a rate which is paid to the Manufacturers Railway Company out of the St. Louis rate by the respective St. Louis lines. I want to ask whether, in your opinion, that amount is a reasonable amount as a payment to be made out of the St. Louis rate to the Manufacturers Railway Company for the service which it rendered covering interchange business?

Mr. Coyle: As I understand it, that is for the protection of the St. Louis rate to the industries on the tracks of that railroad.

Mr. Kirby: Yes, sir. The evidence shows that that rate applies to interchange business to and from industries located
387 on the line of the Manufacturers Railway Company in South St. Louis?

Mr. Coyle: Well, I should say, as compared with the charge made for similar service by other terminal lines that it would be quite reasonable.

Mr. Kirby: That is all I want to ask."

Cross-examination by Mr. Colston:

My estimate as to the reasonableness of that rate is not based entirely upon a comparison with what is charged by other lines for a similar service, because I consider that the charge of one cent a hundred pounds made by other lines almost universally, I believe, is a fairly reasonable rate for the service rendered as a terminal line in the protection of the through rate.

Among the elements that I have considered in arriving at my opinion that a rate of $4.50 is a reasonable rate for the service performed by the Manufacturers Railway Company, I have in mind that while I was with the Wabash we made the rate of one cent a hundred switching on this side of the river, based upon statements made by the Transportation Department of the Wabash Railroad that it could not be done at much less than that and give us a reasonable profit for doing it. This service concerning which the Transportation Department of the Wabash gave me that information was not based upon length of haul, as the length of haul makes no difference. The Wabash made any switch for that price.

I know nothing about the average length of haul upon which the Transportation Department of the Wabash Railroad based its rate of one cent a hundred pounds. I do not know how it compared as to expense or cost per ton with the service performed by the Manufacturers Railway. I do not know how it compared as to
388 total revenue or line-haul revenue with the service performed by the Manufacturers Railway. I do not know how it compared with the expenses and facilities which were required and used

by competitors interested on our line as do the same elements on the Manufacturers Railway.

As a matter of fact, I do not know by comparison any elements of similarity or dissimilarity between the service I have compared and upon which I have based my opinion, and the services of the Manufacturers Railway Company. From my experience as a railroad traffic man I know that switching arrangements between trunk lines or line carriers are ordinarily understood to be reciprocal. There can be no reciprocal switching arrangement with a line such as the Manufacturers Railway Company. Therefore, there is that difference between the Manufacturers Railway and railways whose services I have been comparing with those of the Manufacturers Railway.

"Mr. Kirby: By reciprocal arrangements, did you mean that each carrier which entered into that kind of a terminal rate had a line haul and so might expect terminal business from the other carrier?

Mr. Coyle: I think what is meant by reciprocal switching, as I understand it, is that similar charges might be made for similar service by another line hauling the traffic.

Mr. Kirby: But you meant another line which also had a line haul?

Mr. Coyle: To illustrate: The Missouri Pacific would absorb Wabash switching and does absorb Wabash switching in St. Louis, and necessarily the Wabash must absorb Missouri Pacific switching, say, on a Kansas City shipment. The reciprocal switching, as I understand it, would be what each would charge the other for making that switch.

389 Mr. Kirby: Which is the more remunerative movement, line haul or switching—which is the more expensive, to put it the other way?

Mr. Coyle: Well, per mile, I should think the switching of course.

Mr. Kirby: So that a carrier which did only a switching business and had no line haul movements to help it out on its revenue, its average cost of operation would be greater than a carrier which had both kinds of movement to help it out on its revenue?

Mr. Coyle: Per mile of track operated, I should say, yes, sir.

Mr. Kirby: In speaking of the one cent per hundred rate of the Wabash, was that without regard to the length of the switching movement?

Mr. Coyle: I think it was pretty generally, yes, sir.

Mr. Kirby: In other words, in fixing the rate and reasonableness of the charge out of the St. Louis rate for switching movements performed by the Wabash, the length of that haul incident to the switching movements was not considered?

Mr. Coyle: No, not to any great extent.

Mr. Kirby: In that rate of one cent per hundred, was there a minimum?

Mr. Coyle: My recollection is that it was made $5 a car minimum. I am only giving this from recollection of five years ago.

Mr. Kirby: May I ask you this: In answering the question I asked

you about the reasonableness of a flat rate of $4.50 on interchange business, was that based on all of the information which you have now which would bear upon that question, and not merely upon your comparison with the Wabash rate?

Mr. Coyle: Well, you mean as to the switching charges of other railroads on other commodities?

390 Mr. Kirby: Yes.

Mr. Coyle: Yes, sir.

Mr. Colston: And a corresponding desire on the part of the other carrier to obtain business from the lines of the first carrier's rails that otherwise would move over a competing line?

Mr. Coyle: Yes, to open up the entire territory to all of the lines terminating.

Mr. Colston: In other words, to reach the territory of other lines?

Mr. Coyle: Yes, sir.

Mr. Kirby: Is it the practice of carriers with respect to reciprocal switching charges to do them as cheaply as possible?

Mr. Coyle: Well, I think that they aim to get a reasonable charge for furnishing the terminal facilities.

Mr. Colston: Sometimes they try to charge as much as they can to keep the other line carriers out of their terminals on competitive business, do they not?

Mr. Coyle: Well, that may be the motive sometimes.

Mr. Colston: It is a fact, is it not, that rates of switching on competitive business are generally higher, where there is any difference, in St. Louis than the rates of switching which apply on non-competitive business?

Mr. Coyle: I think some railroads publish such tariffs.

Mr. Colston: Wherever there is a difference, the competitive switching is higher, is it not?

Mr. Coyle: I think that is the case, yes, sir.

G. F. Moore, resumed:

Comparing Complainant's Exhibit 1, with former Exhibit 61, as introduced on page 91 of the abstract of the record of the former hearing, I find no essential difference in the cost per car for the period ending June 30, 1910, and the period ending June 30, 1911.

391 If any difference, at all, the cost per car for the year ending June 30, 1911, would be somewhat smaller, because of an increased volume of business of approximately 10,000 cars over the previous year.

The Manufacturers Railway Company is in position to determine accurately the cost per car in handling its terminal freight business at St. Louis because our business is wholly at present, and for the period enumerated, a terminal switching business. We engage in no other business. We do not have any passenger business or any business delivering from one road to another. It is all delivery to a consignee or from a consignor to a railroad. All of our business is at present a carload business. Where I have spoken of incidental services rendered by the Manufacturers Railway Company as dis-

tinguished from principal movements, I mean the weighing of cars and inter-work movements.

It is impossible for other carriers operating in St. Louis to accurately determine, as a matter of accounting, the exact cost per car of their terminal movements, because there is no unit of cost. These other lines handle through freight, freight terminal switching, passenger business over the same property and often with the same cars and engines. There is no road that claims it can definitely determine the terminal cost per car.

I have endeavored by inquiry to ascertain the actual operating cost of terminal movements incurred by other carriers doing switching in St. Louis, and have had correspondence with other lines concerning this subject. I have a letter from Mr. Henry Miller of the Wabash Railroad, dated January 10, 1912, one from Mr. B. F. Bush, President of the Missouri Pacific and St. Louis, Iron Mountain & Southern Railway, dated January 4, 1912, one from Mr. H. U. Mudge, President of the Chicago, Rock Island & Pacific, dated January 2, 1912.

(These letters were offered in evidence as Complainant's
392 Exhibits 2, 3 and 4, respectively, and support the witness' statement as to the difficulty of other lines in trying to reach accurate cost of terminal movements.)

In my judgment the actual cost of operation of the Manufacturers Railway compares very favorably with the operating costs of other lines in St. Louis. I am naturally interested in making my costs as light as possible as executive of the road, and when I say favorably, I mean that I have been successful in reducing my cost to the lowest possible figure consistent with the best service.

The future operations of the Manufacturers Railway, so far as fixed charges are concerned, will be very materially increased when we take over certain property that we now use without paying any rental or lease, but which is essential for our operation. We use it by consent. The reason that we have not a lease is that we have an arrangement to take the property over at a cost price plus carrying charges when we do take it over, less any revenue that the property might bring the present owners, so if we pay them something now for it, it would just decrease the price when we buy it, so the owners of this property are allowing it to remain in this shape until our road is thoroughly in shape to be financed, when we will buy that property and thus increase the fixed charges of our road.

We have acquired the property between Broadway on the west, First street on the east, Miller street on the south and Park avenue on the north, a continuous piece of property admirably located for the purpose of constructing a freight station and freight delivery yard. It is an irregular piece of property approximately from 1,200 to 1,400 feet east and west and 400 feet north and south. The title of that property lies in Adolphus Busch. The property was
393 purchased for the specific use of a freight station and yard.

I made all of the terms of the purchase, arranging the prices, and now have the deed for some of them, and it is to be turned

over to the road when we are ready to finally finance our property. Mr. Busch personally paid for the property, and it is not included in any of our railroad accounts as yet, and for that reason the title is in Mr. Busch's name.

When this property is taken over by the Manufacturers Railway Company its cost and the cost of carrying it, etc., will become a part of our fixed charges and of our capital account, and our taxes will be increased to the extent in the future that additional property for railway purposes is acquired by the Manufacturers Railway. Presumably, the increased earnings on account of that property will take care of itself.

The property from Utah to Cherokee street lying diagonally four city blocks we are using for main line. We are using property just south of Dorcas street running from what was known as First street to the river for a viaduct approach. We are using property for certain portions of our main line running up Dorcas street. All of this property is private property that we now use that we are not paying for that eventually we must take over. I think we have about 2,500 feet of our track at Park avenue on property that we purchased from the School Board for railroad purposes that the railroad as yet has never paid for. These pieces of property we are now using, deriving benefit from their use, and we are not paying for the same. When these properties are taken over they will increase the cost per car from a fixed charge standpoint.

I have personally had charge of negotiations for the purchase and concluding the purchase of property in South St. Louis, all
394 along our Second street line north and south intended for use by the railway, whether the property was taken in the name of the railway or Adolphus Busch, and I am familiar with the values of property all along that line. I have purchased about one and one-half million or one and three-fourths million dollars of property for Mr. Busch in the last fifteen months, and based upon this experience I would say the reasonable value per square foot of the property described as the depot property is $2.01. Some of this property will cost us about $1 a square foot and others about $2 a square foot.

..Taking into consideration the number and character of movements under the tariffs effective prior to March 1, 1910, the average allowance received by the Manufacturers Railway Company was about $4.50 a car. There was about $7,000 less revenue at $4.50 a car than under the old tariff without changing the $2 rate or the $1 rate.

The revenue which we are now receiving for all kinds of service performed by the Manufacturers Railway Company is sufficient to pay operating expenses, taxes, rentals and other fixed charges and seven per cent on the investment. If the road were enlarged by taking over the property which has been acquired for the purpose of extensions and our fixed charges increased as I have indicated, the present volume of business would necessarily be handled at a loss; that is, we would lose money on the present volume of traffic.

We would have to have an additional volume of business, and it

was for the purpose of creating additional business that this property for extensions was bought.

I have three vouchers paying the wharf rent to the City of St. Louis from April, 1910, for three six-months' periods, a total
395 of eighteen months. This rental we pay six months in advance. The three vouchers aggregate $6,000. These vouchers are copies of the bankable vouchers as paid through the bank.

(The three vouchers offered and introduced in evidence as Complainant's Exhibits 5, 6, and 7, respectively.)

I have here a voucher dated December 20, 1907, covering a total amount of $54,810.64 paid to Anheuser-Busch Brewing Association. The items shown by this voucher making up the total are: for lease of tracks for the period January 1, 1910, to December 31, 1911—that is, for a period of two years at $2,000 per month, $48,000, as per the lease. Under the lease this rental should have been paid monthly, but we were actually embarrassed and did not pay it.

The next item is for rent of office building July 1, 1910, to December 31, 1911, $3,600, this being the building occupied by the Manufacturers Railway for office purposes, and in part subleased to other tenants, making on the whole a little profit to the Manufacturers Railway, which is accounted for in our usual way in the annual report. The name of this building is the "South Side Bank Building."

The third item ($3,210.64) is for taxes paid on property owned by the Interstate Warehouse and Realty Company, which is a holding company, holding certain real estate for the Manufacturers Railway, and on account of paying the taxes in August we received a discount. I did not have the money at the time to pay, so I had them paid through the real estate department of he Anheuser-Busch Brewing Association, and this item covers the payment of the
396 refund of that amount. It is simply repaying the Anheuser-Busch Brewing Association for the taxes it paid out in our behalf.

The stock of the Interstate Warehouse & Realty Company is owned by the stockholders of the Manufacturers Railway Company; that is, the equitable ownership is in the Manufacturers Railway Company. It is a subsidiary company of the Manufacturers Railway Company.

(Voucher so offered in evidence as Complainant's Exhibit 8.)

I have prepared a statement of our income account and balance sheet as of June 30, 1910 (offered and introduced in evidence as Complainant's Exhibts 9 and 10).

I also have a copy of income account and balance sheet for the year ending June 30, 1911 (offered and introduced in evidence as Complainant's Exhibits 11 and 12).

I also have a copy of our trial balance as of November 30, 1911 (offered and introduced in evidence as Complainant's Exhibit 13).

The figures shown in these statements (Complainant's Exhibits

9, 10, 11, 12 and 13) correspond with those disclosed in our annual reports to the Commission.

I have a list of notes which are outstanding and owed by the Manufacturers Railway Company from September 26, 1909, down to December 21, 1911, showing the amounts and dates.

(This list offered and introduced in evidence as Complainant's Exhibit 14.)

It was necessary for the Manufacturers Railway to borrow money during this period, evidenced by these notes, to operate the
397 property. The Manufacturers Railway never stopped operation because of this litigation. We went on constructing and operating. Part of this money was used for construction purposes, part of it for operating purposes. We were receiving no revenue from the roads, this revenue being tied up in our reparation claims. We had to have money to operate on and the board of directors, at a duly authorized meeting, authorized the officers to negotiate loans. Mr. Adolphus Busch was the most available man from whom to borrow money, so we borrowed of him freely. This money was used for paying off the proper and just liabilities, for conducting our operations, and for doing our construction work during this period. We did not borrow more than we needed, either from Mr. Busch or from the banks. I borrowed a good deal more than I wanted to.

All of our interchange business with the St. Louis lines is not done on the flat $4.50 basis. There are exceptions. That is, we have a special contract with the St. Louis Southwestern Railway providing for the use of certain terminals and facilities of the Manufacturers Railway, a contract that was made in November, 1910. I negotiated this contract and it is in fact practically two contracts.

I here produce a copy of the contract between the Manufacturers Railway Company and the St. Louis Southwestern Railway Company, dated November 9, 1910, and attached to which is a carbon copy of a letter dated December 19, 1910, and addressed to Mr. Edward A. Moseley, Secretary of the Interstate Commerce Commission. I have also copy of a separate agreement dated December 9, 1910, between the same companies. These agreements were entered into
398 and executed on the dates mentioned, but were not made effective until the Interstate Commerce Commission vacated their suspension orders concerning certain tariffs. There was no suspension order against this contract, but in order to make all matters harmonious, we did not attempt to put the conditions of that contract into operation until the Commission suspended the suspension orders on the tariffs.

(These contracts offered and introduced in evidence as Complainant's Exhibits 15 and 16.)

Both of these contracts were executed at the same time and one would not have been executed without the other; that is to say, the contracts were entered into as one single arrangement, although in the form of two separate contracts.

Taking both of these contracts together, and upon considering all things, I regarded them as good contracts to make for the Manufacturers Railway, possibly not remunerative from the dollar and cent point of view for the present, maybe not for a number of years, but in making these contracts I had in mind reasons other than dollars and cents. As, for instance, the Manufacturers Railway was obligated by a franchise to construct and operate a line on Second street and obligated by the promises of its owners to provide certain facilities in the way of depots and public service utilities. We had a considerable investment involved on Second street and very little business. Such business as we did have required constant attention. I had to run my locomotives up and down Second street for a few cars.

These agreements, taken together, secure for me at the one time a tenant for the freight depot which we intend to build, and secure for me a customer who would solicit business for those tracks, and the people they induce to use those tracks would bring other people there, no doubt; would order their shipments from other
399 roads to be placed via the Manufacturers Railway. I did it to strengthen our position as a terminal switching line in the City of St. Louis by handling the interstate traffic of another road.

I offered the same contracts to a number of other St. Louis lines, and was surprised that I could not get more of them to accept these contracts. I made them on a liberal plan, however; a plan defensible by comparison with the Peoria & Pekin Union, one of the largest known terminals in the country, operated at Peoria. When these contracts are analyzed they will be found to be very similar, both in charge and methods of operation, to the arrangements of the Peoria & Pekin Union, at Peoria.

These contracts increased my volume of business without increasing my transportation service cost, as we had the facilities along Second street and had to perform the service. I could even now double the volume of business on North Second street where this contract is operative, even treble it, without increasing to any great extent the operating cost. I still hope to secure contracts similar to these with four other lines, and have reasonable assurance that I will.

The greater part of the Cotton Belt inbound business is lumber. South St. Louis needs lumber, but it is a commodity that nearly always reaches us on a spent or used rate. There is nothing left to pay us for our services, and the shipper is called upon to pay us our local rate of $2 in addition to the St. Louis rate, while the North Side and some parts of the South Side are served on a flat St. Louis lumber rate.

The car service has been averaging us probably about $2 a day more than we can collect on all foreign equipment and lumber in foreign equipment. The Cotton Belt under these contracts
400 undertakes to assume all of the car service or per diem on the equipment that we handle for them under these contracts and pay to us $1 a car. The consignee pays us nothing. They thus

get their lumber on the flat St. Louis rate. We get $1 a car and are relieved of approximately $2 a car of car service.

On business other than lumber we would lose the difference between what we would get under our tariff and this contract charge of $1, but the Cotton Belt does not handle a great volume of business other than lumber. Even so, for the purpose of building up the business, I think the contracts are defensible. I did not offer them to the Cotton Belt any sooner than I offered them to some of the other lines.

We have been operating under these contracts. That part of our line north of Lynch street on Second street is used under these contracts.

These contracts involve another feature; that is, of car service and per diem. The Manufacturers Railway has tried to secure membership in the American Railway Association. It has been denied this membership. It was forced to operate on a basis in St. Louis as though it was a shipper of freight, as though it was the consignee or consignor, and to pay car service on the same basis as the consignee or consignor, which was very burdensome and discriminative against it. It did not permit us to put our customers on an equal basis in receiving and handling freight, that the customers of the Iron Mountain or of the Terminal Railroad Association had, because of the fact that we were assessed car service from the time the car was delivered to us, and we were allowed $2 per diem only, and the shipper, after we delivered the car to him, was entitled to two full days, and
401 as it required time to transport the car to and from the connecting line, it cost us $1 a day on each car. These contracts had the effect of bringing this matter to the attention of the roads, and some of the roads voluntarily offered us the advantages of operating under the per diem agreement.

All other lines doing terminal work in St. Louis have the benefit of the per diem rule under the American Railway Association. We are the only line performing terminal service in St. Louis which has not been given the benefit of those rules.

Now to illustrate, supposing the Vandalia delivers a carload of coal to the Terminal Railroad Association for final delivery at the Miller Street yard of the Iron Mountain. This car is handled by the Terminal Railroad on an intermediate reclaim basis of one and a half days. The Iron Mountain, as a terminal delivering line, is allowed six days reclaim. The car is set out at Miller street and the Iron Mountain pays the owner of that car the per diem while it is on the rails of the Iron Mountain, whether it be three days or ten days. They then reclaim on the Vandalia for the full six days, and the Iron Mountain virtually has the use of that car for six days for nothing. If the Vandalia offered a car to the Terminal Railroad for delivery to our Park Avenue yards, one block north of Miller street on the Manufacturers Railway, the Terminal Railroad would get six days reclaim and deliver the car to us. After we had it on our tracks forty-eight hours we would be compelled to pay the Terminal Railroad $1 a day detention for that car. So, in addition to their reclaim of six days which they would recover from the delivering

line, they would receive $1 a day from the Manufacturers
402 Railway.

"Examiner Mackley: What do you mean, exactly, by reclaim?

Mr. Moore: The per diem is 35c. a car a day.

Examiner Mackley: That is, which is paid to the foreign lines?

Mr. Moore: Paid to the owner of the car.

Examiner Mackley: Now you say they get a six-day reclaim.

Mr. Moore: They are allowed a six days' reclaim.

Examiner Mackley: What exactly do you mean by that?

Mr. Moore: I mean that the line delivering that car to the Terminal Road allows them to reclaim on them for six days, or six times 35c., whether they have had it six days on their road or not.

Examiner Mackley: Does the Terminal Road always pay it on their line, six days or not.

Mr. Moore: The Terminal's reclaim in St. Louis is six days.

Examiner Mackley: Whether they have it on their line six days or not?

Mr. Moore: Whether they have it on their line six days or not.

Examiner Mackley: Do you know whether that is the practice?

Mr. Moore: That is the practice in St. Louis. It is fixed by the roads as between themselves.

Examiner Mackley: It is fixed under the rules?

Mr. Moore: Yes. They have a committee in St. Louis which fixes such rules as that for car operation.

Examiner Mackley: And that applies whether they keep the car six days or not?

Mr. Moore: Yes, sir."

If the Manufacturers Railway keeps a car six days it pays
403 $4 car service to the delivering line. We might possibly collect some money from the shipper for our own car service under our own terms on that car, but if we had it six days and under the reclaim rule under which the other roads operate it would practically cost us nothing, because we would pay the car owners and get it back from the trunk lines that delivered the car to us. Now we allow the shipper forty-eight hours free time, but we cannot allow our shippers to operate under the average car service plan. They demand that of us, and I have furnished the Commission the original letter from one of our large shippers wherein we are advised he is taking business away from us because we cannot handle his business for him on the average car-service plan. The shippers on the Manufacturers Railway are expecting and demanding the benefits of the average car-service agreement, and were it not a fact that we have in operation a large number of cars that cost us nothing, and on which we collect car service under our tariffs, we would lose on an average more than $1 on every car that we have handled. My average car detention from actual check of my own records has been four and a half days, and that is what I am asking for as a reclaim. The larger terminals claim that their reclaim should be six days.

Examiner Mackley: That is based on average?

Mr. Moore: The average car detention; yes, sir.

Examiner Mackley: And if that is not the average the man gets an additional concession of 35c. a day on each car?

Mr. Moore: The Terminal would have, yes, sir, but I presume that is a fair average—at least that is their business. I know what the average on our line is, and I am now asking four and a
404 half days' reclaim instead of six days.

Examiner Mackley: Is there any other terminal road operating under the reclaim agreement here?

Mr. Kirby: All the roads who operate the Terminal Association indirectly are here. The Terminal Association as an association is not a party to this proceeding, but all the roads in St. Louis who are proprietary owners of the Terminal Association are represented.

The Witness: The refusal to permit the Manufacturers Railway Company to operate under the average agreement operates to the financial detriment of the Manufacturers Railway Company and to the shippers who use the Manufacturers Railway Company. The shippers on other lines have the privilege of accepting the average car service plan and the shippers on our line have not that privilege. I have recently published them in a tariff, as I had to do it.

The Manufacturers Railway, while not a member of the American Railway Association, has received permission of all except three lines to operate as though it were a member of the American Railway Association and the per diem rule agreement. The Louisville & Nashville, the Vandalia and the Big Four have not granted the Manufacturers Railway this privilege. This arrangement will be of advantage to the patrons of the Manufacturers Railway.

Since operating under the contracts with the Cotton Belt, we have handled approximately 140 to 150 cars, most of it forestry products; that is, we handled this number of cars during the period July, 1911, to December 31, 1911.

About 33 per cent of the business handled by the Manufacturers Railway Company is handled in per diem equipment; that
405 is, in equipment belonging to members of the American Railway Association who operate under the per diem agreement. Our application for membership to the per diem rule agreement was rejected.

I have prepared and have here a statement showing our car service revenue, payments, and copies of the vouchers. For the fiscal year ending June 30, 1911, there was a net credit balance of $446.91 on car service, but that there is a credit balance results from the fact that at least 66 per cent of our business was handled in equipment that I did not have to pay anything for, and on which I did collect car service under our tariff.

I have here vouchers, copies of bankable vouchers, the originals of which have passed through the banks and are in our files, showing the monthly car-service payments to our two connections for the period beginning with May, and in connection have compiled a statement condensing what the vouchers show. These vouchers were paid with protest clause on each voucher.

(One voucher and the compiled statement offered and introduced in evidence as Complainant's Exhibit No. 17.)

I also have vouchers and a summary of them showing payments to the Wiggins Ferry Company, part of the Terminal Railroad Association of St. Louis, for car service between May, 1910, including November, 1911, a total of $28,282. The vouchers are copies of original bankable vouchers which have passed through the bank and are now in our financial records. Each of these vouchers contain the same form of protest which appears on the sample voucher attached to Exhibit 17.

(Statement offered and introduced in evidence as Complainant's Exhibit No. 18.)

406 I felt that under the circumstances the charges were unreasonable, illegal and unjust, and discriminative, and had intended at some time or other to attempt to recover. I stamped this protest clause on the face of these vouchers.

Immediately upon receiving the partial opinion of the Commission declaring us to be a common carrier, I renewed our application for membership in the per diem agreement of the American Railway Association. This application has been laid over from one meeting to another, without action. All lines except the Vandalia and the Louisville & Nashville have informed me through correspondence that they favor our admittance, and I have been further informed that the Committee on Relations recommended to the Executive Committee that our application be acted upon favorably.

We are now operating and conducting our accounts as though we were a member of the American Railway Association and were privileged to work under the per diem rule agreement by setting up for each car owner a credit account in our books showing the number of per diem days that the equipment has been on the rails of the Manufacturers Railway and will authorize them to draw for their balances the same as if we were a member. But we will also make a reclaim of four and a half days on the delivering trunk line at St. Louis from the first day of December, 1911, and will have drafts drawn against us by the car owners.

This arrangement enables me to give my shippers the average car service plan and have issued a tariff making it possible for them to receive the benefits of our operations under the per diem rule agreement. This tariff has been filed with the Commission. (This tariff offered and introduced in evidence as Complainant's
407 Exhibit No. 19.)

I consider this $4.50 per car rate more defensible than a scaled rate for terminal switching, because it is less open to criticism. The difference in the element of loss on account of high-class freight and low-class freight in terminal switching is very small. We can afford to handle a car of pianos about as cheaply as we can afford to handle a carload of coal.

The primary service rendered by the Manufacturers Railway is a switching and terminal carload service. The Manufacturers Railway Company is the only terminal company doing an exclusive terminal and switching service in St. Louis. If you consider all of the constituent lines of the Terminal Railway Association as one

company, then it and all other lines have either a cross-river haul or road haul in connection with what switching service they may render, and in addition to that some passenger service, so that when you try to measure the reasonableness of our rates with the rates of other carriers in St. Louis, the parallel is not an exact one for the reason that our entire revenue is derived from a switching service and these other lines supplement their revenue with other service and parallel comparisons cannot be made. They have rates in effect that are not remunerative in and of themselves. So has the Manufacturers Railway. It is necessary sometimes to use certain of your property at a loss in order to encourage the growth of the business. In some cases you are forced to do so on account of competition. In other cases you are forced to do so because your rates are fixed by ordinance. Our object is to have our entire schedule return a profit.

There is another element of uncertainty in the fact that in St. Louis the rates of various terminals are fixed by ordinance.
408 We have that thoroughly illustrated in the Terminal Railway Association. They perform a service under ordinance for $2 to the C., B. & Q.—I think it is $2—possibly $1. The Manufacturers Railway Company, pursuant to Ordinance 22,025, cannot charge in excess of $2 per car on certain of its terminal service. The same ordinance fixes the charge of 1½c. per hundred pounds on business handled by the Manufacturers Railroad in Illinois when it extends over into Illinois. This ordinance rate of $2 applies to interchange movements when the tariffs of connecting lines do not provide for delivery within the St. Louis rate. When delivery is included in the St. Louis rate, then the $2 rate is not applicable. Approximately 7,000 cars out of the total number of 52,000 cars were handled at $2.

I regard the rates fixed by our old tariffs which were canceled as of March 1, 1910, as reasonable. These rates were effective when I came to the property, and one of my reasons for regarding them as reasonable was that all lines had adopted them, published them and operated under them, and when I became acquainted with the property, and with the cost of operating the property, I could see there was another feature of reasonableness because of the comparison to the cost of operation. I regard our present flat rate of $4.50 a car as a reasonable allowance out of the St. Louis rate. I reconcile these two statements as reasonable because the increased business that we have had has enabled us to operate more cheaply than we had been operating under the old tariff.

I have sample copies of freight bills illustrating our various movements, illustrating all our interstate movements. These bills were made from original bills on file in our office.

I have a freight bill dated June 18, 1910, for $3.50, con-
409 signee Louis Obert Brewing Company, St. Louis, Mo., consignor, Greeley & Co., Asbury, Mo. This bill covers our switching charge on a car of beer kegs. The car was received by us at the Wiggins Ferry connection. The car was taken to our classi-

fication yard partly over the main line, thence up the Dorcas line to Eleventh street, where delivery was made to the Obert Brewery.

The Louis Obert Brewing Company is one of the oldest breweries in St. Louis and is located at Lynch and Twelfth streets, before there was a Manufacturers Railway Company. It is located just across the street from our Eleventh street yard. This brewery is a competitor of the Anheuser-Busch Brewing Association. To my knowledge there is no common ownership of stock between the two brewing companies—in fact they have no business together. So far as I know the two breweries are competitors in every sense of the word.

This car traveled up a grade of about four and a half per cent, and, as stated, was delivered in the Eleventh street yard, which is in what I have classified as the middle zone, the middle zone being bounded by Lynch on the north, Utah street on the south, Thirteenth street on the west and the Iron Mountain tracks on the east, and within the middle zone all service for the Anheuser-Busch Brewing Association is rendered.

The Eleventh street yard where this delivery was made to the Louis Obert Brewing Company is a public delivery yard and is used as such. All our tracks are public delivery yards, the tracks are on property leased from the Anheuser-Busch Brewing Association and used by the Manufacturers Railway Company for common carrier purposes. Other industries are served by the Manufacturers Railway Company in this same yard (Eleventh street yard), for instance, the Anheuser-Busch Brewing Association and the
410 Union Fuel Company.

The movement of this car just described is one of the most expensive and most difficult movements which the Manufacturers Railway Company performs. This Eleventh street yard is very near the large manufacturing plants of the Anheuser-Busch Brewing Association. A large volume of the service rendered the Anheuser-Busch Brewing Association is rendered in that same yard. There is no difference in the character of the service which we render for the Louis Obert Brewing Company in the Eleventh street yard and the service we render in the same yard for the Anheuser-Busch Brewing Association—absolutely no difference in the service we render for these two companies. One company has the same rates as the other for track and space and the same rights to the use of the tracks. The service rendered for the Anheuser-Busch Brewing Association is given no preference over that rendered for any other shipper on the line. (This freight bill offered and introduced in evidence as Complainant's Exhibit No. 20.)

"Mr. Stone: I want to ask one question in the way of explanation: This $3.50 was paid by the Obert Brewing Company to the Manufacturers Railway Company?

Mr. Moore: No, sir. That $3.50 is an item charged against some railroad in our reparation account; it is an outstanding item.

Mr. Stone: How did you come to make it out against the Obert Company?

Mr. Moore: We did not make it out against Obert and Company.

Mr. Stone: What does this illustrate then?

Mr. Moore: That is a freight bill, the form which we use, but that will be rendered against the road delivering that car to Wiggins Ferry for us, substantiating a statement that we will make
411 out against that road so that they will have the details as to where the car went, where it was from.

Mr. Stone: It was not actually collected from Obert and Company?

Mr. Moore: Never offered to them for collection; no, sir. These bills are for the railroads instead of the consignees."

I have copy of bill dated March 4, 1910, covering a shipment from P. Mayer, Bradford, Pennsylvania, consigned to the Anheuser-Busch Brewing Association, St. Louis, Missouri, covering beer packages, charges $3.50.

The physical movement of this car over the rails of the Manufacturers Railway Company was identical with the movement of the car covered by the bill just offered as Exhibit No. 20. The point of delivery was the same, the only difference being that in this instance the consignee is the Anheuser-Busch Brewing Association instead of the Louis Obert Brewing Company.

(This bill offered and introduced in evidence as Complainant's Exhibit No. 21.)

I have a freight bill covering a shipment from B. M. C. I. Co., Clifford, Illinois, consigned to the Union Fuel Company, St. Louis, Missouri; coal, with charges of $3.70. This bill covers a carload of coal consigned to the Union Fuel Company which was unloaded in our Eleventh street yard and was handled by the Manufacturers Railway at a charge of ten cents a ton, producing a revenue of $3.70 for the car. The physical movement of this car was identical with the movement of the cars described in Exhibits 20 and 21.

(This bill offered and introduced in evidence as Complainant's Exhibit No. 22.)

I have a freight bill dated March 21, 1910, covering a car from the Consolidated Coal Co., Collinsville, Illinois, consigned to
412 the Anheuser-Busch Brewing Association, St. Louis, Missouri, with charges of $4.60. This car was received from the Wiggins Ferry Company at our interchange with that line, thence taken to our classification yard, thence over the viaduct and Pestalozzi street line, where it was delivered to the Anheuser-Busch Brewing Association at our yard at Ninth and Pestalozzi streets.

(This bill offered and introduced in evidence as Complainant's Exhibit No. 23.)

The Union Fuel Company has no business relation or connection with the Anheuser-Busch Brewing Association. The probabilities are that the car of coal covered by Exhibit 22 was unloaded by them for the American Brewing Company, as they supply them with

coal. The American Brewing Company is located on Broadway north of Lynch street, between Broadway and Seventh streets. Our Eleventh street yard is used almost wholly by the American Brewing Company for their coal; they do their loading and unloading of beer packages and grain in what is known as the "postoffice yard", which is within the middle zone.

There is no common ownership between the American Brewing Company and the Anheuser-Busch Brewing Association. I cannot conceive of any condition that would make it profitable or advantageous for them to locate there for the purpose of being near the Anheuser-Busch Brewing Association. In every sense of the word, so far as I am informed the American Brewing Company is a competitor in the beer business in the St. Louis market with the Anheuser-Busch Brewing Association.

I think the American Brewing Company use the Manufacturers Railway exclusively. The greater part of their business is
413 handled in the post office yard, which has been enlarged to accommodate their business, and there are two other locations that they use within that zone more or less. The Anheuser-Busch do not receive or deliver cars in the post office yard; that is exclusively for the business of other people. In the other yard they might receive cars right alongside of the American Brewing Company's cars. In the two yards in which we do serve the American Brewing Company and the Anheuser-Busch Brewing Association there is no difference in the character of the service that we render to one brewery as distinguished from the other. The service is identical in every way. It is identical in the physical characteristics of the movement, as well as in the promptness with which we serve each brewery. There is no difference in the rate charged.

I have freight bill dated January 27, 1911, covering a shipment of coal from S. C. M. Co., Little Oak, Illinois, consigned to the Schroeter Coal Co., St. Louis, Missouri, with charges of $3.39. The movement of this car is identical with the movement described for the car covered by Exhibit No. 23, the only difference being in the name of the consignee.

(This bill offered and introduced in evidence as Complainant's Exhibit No. 24.)

Mr. Colston: May I ask one question there; if this shipment covered by Exhibit 24 was delivered in the Ninth and Pestalozzi street yard?

Mr. Moore: Yes, in the Ninth and Pestalozzi street yard. Our Ninth and Pestalozzi street yard is more nearly an enclosed yard than any yard we have on our road. It is entered by large wagon gates and other gates to allow the railroads to pass in and out. It is completely paved and is used largely for the loading of a
414 peculiar brand of beer known as "Budweiser". We deliver quite a lot of coal there for the use of the brewery, and have used it whenever it is convenient so to do for other patrons to load and unload their freight. This yard is the yard or enclosure in which the brew houses of the Anheuser-Busch Brewing Association and one

of its large boiler plants are located. We deliver coal in this yard to the boiler plant of the Anheuser-Busch Brewing Association. There is no difference between the character of the service nor the amount of the charge as between a car of coal to the Schroeter Coal Company in this yard and one delivered to the Anheuser-Busch Brewing Association, the only difference being that one car was unloaded into boilers and the other car was unloaded into wagons, but the service, so far as the railroad was concerned, was identical in every respect.

I have freight bill dated March 5, 1910, covering car of furniture from Standard Furniture Company, St. Louis, Missouri, consigned to the Beebe & Runyon Furniture Company, Omaha, Nebraska, with charges of $5.50. This car was loaded at Second and Dorcas streets on property used by the Manufacturers Railway, such property to be eventually taken over by the Manufacturers Railway, and is one of the pieces of property that is being used without formal lease and for which we are not now paying rental. This car was taken through our lower yards, thence over the viaduct, made up in our river yards into a train and delivered to the Wiggins Ferry Company at Lesperance street on the river bank. There would be no corresponding movement from the Anheuser-Busch Brewing Association from that particular track, as they make no use of that track.

415 (This bill offered and introduced in evidence as Complainant's Exhibit No. 25.)

I have copy of freight bill dated November 28, 1910, covering shipment of beer from Anheuser-Busch Brewing Association, St. Louis, Missouri, consigned to John A. Scott & Company, Toledo, Ohio, with charges of $5.50. This shipment was loaded in what is called our Thirteenth street yard by the Anheuser-Busch Brewing Association, was taken out over the Dorcas street line, over the Pestalozzi street line, thence over the viaduct to the classification yard, where it was put in a train for delivery to the Wiggins Ferry at Lesperance street.

(This bill offered and introduced in evidence as Complainant's Exhibit No. 26.)

I have freight bill dated October 23, 1910, covering car of beer packages from W. J. E. Co., Tulsa, Oklahoma, consigned to the Anheuser-Busch Brewing Association, St. Louis, Missouri, with charges of $3.50. This car was received from the Wiggins Ferry at our interchange track. The movement of this car was identical with the movement described in the first case (Exhibit 20), only it went two blocks further west to our Thirteenth street yard instead of to our Eleventh street yard.

(This bill offered and introduced in evidence as Complainant's Exhibit No. 27.)

I have freight bill dated May 14, 1910, covering a car of glass from T. & W., Detroit, Michigan, consigned to Thatcher & Whittemore Glass Co., St. Louis, with charges of $4.00. The physical movement of this car was identical with the movement of the car described

in Exhibit No. 27, the rate being 50 cents more, the application of the tariff making $3.50 for returned empty beer packages and $4.00 on other received freight.

416 (This bill offered and received in evidence as Complainant's Exhibit No. 28.)

I have freight bill dated May 6, 1910, covering carload of glass from M. T. Temple, West St. John, consigned to the Central Dry Plate Co., St. Louis, Missouri, with charges of $4.00. The movement of that car was identical with the movement described in Exhibit 28. This car was delivered at our Thirteenth Street yard.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 29.)

I have freight bill dated November 28, 1910, covering carload of beer from Anheuser-Busch Brewing Association, St. Louis, Missouri, consigned to Anheuser-Busch Agency, San Francisco, California, with charges of $5.50. This car was loaded at the station located in our Ninth and Pestalozzi Street yard. The movement was down the Pestalozzi Street line, thence over the viaduct to the assembling yard, where it was put into a cut of cars for delivery to the Wiggins Ferry at Lesperance street. This car was loaded on the southwest corner of Ninth and Pestalozzi street. This car was loaded in the same yard at which the Schroeter Coal Company's car was delivered in the previous exhibit.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 30.)

I have freight bill dated October 17, 1910, covering a carload of "cullet" shipped by the Green Tree Brewing Company, St. Louis, Missouri, and consigned to the American Bottle Company, Streator, Illinois, with charges of $5.50. That car was loaded at Ninth and Dorcas, which is just one block east of Eleventh street, taken down over the Dorcas Street crossover, thence over Pestalozzi Street main line and the viaduct to the assembling yard where it was put into a cut of cars for delivery to the Wiggins Ferry at Lesperance
417 street. The American Brewing Company receive and load in this yard. This yard is in the middle zone also. We also serve the Anheuser-Busch Brewing Association in this yard.

The Green Tree Brewing Company is located several blocks north of the Anheuser-Busch Brewing Association. It was located there long before the Manufacturers Railway Company was built. To my knowledge there is no identity of interest between the Green Tree Brewery and the Anheuser-Busch Brewing Association. I can conceive of no business relations existing between the two which would make it advantageous for the Green Tree Brewery to locate or do business near the Anheuser-Busch Brewing Association. They are competitors with the Anheuser-Busch Brewing Association. There is no difference or distinction in the physical character of the service which the Manufacturers Railway Company renders to the Green Tree-Brewery in the Ninth Street and Dorcas Street yard as distin-

guished from the service rendered to the Anheuser-Busch Brewing Association in the same yard.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 31.)

I have freight bill dated June 6, 1910, covering a carload of beer from the Louis Obert Brewing Company, St. Louis, Missouri, consigned to Crelly & Company at Asbury, Missouri, with charges of $5.50. That car was loaded at Eleventh street and Dorcas, one block further west than the car just described in Exhibit 31. In other ways the movements were identical, excepting that Louis Obert loaded it instead of the Green Tree Brewery. This car was handled in the same public delivery yard where we rendered the service which was covered by the first bill with Obert's name on it, which we have introduced in evidence (Exhibit 20). The Obert
418 Brewing Company use that yard almost exclusively for their business.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 32.)

"Mr. Stone: May I ask what the object is in introducing so many of these bills? Is there a different movement for each one?

Mr. Kirby: Yes, they are simply illustrations which together cover all the movements which are made, and instead of trying to show by general description we are trying to show by copies of the freight bills, with such description as may be necessary, all the kinds of movements which will be covered by our reparation claims, and incidentally to show the nature of the service which is rendered to the Anheuser-Busch Brewing Association and for other shippers in the respective yards.

Examiner Mackley: They are practically all different movements?

Mr. Kirby: Yes, except in some cases we have parallel cases to show that the service rendered to the Anheuser-Busch Brewing Association is the exact parallel of service rendered to some other brewery which is a competing brewery, or some coal company which receives coal or something else in the same yard; and in some cases we have cases where competitors, so far as the Anheuser-Busch Brewing Association are *con*-concerned, are rendered services in the same yard as the Anheuser-Busch Brewing Association."

I have freight bill dated March 5, 1910, covering carload of beer packages from the Rome Club, Herrin, Illinois, consigned to the American Brewing Company, St. Louis, Missouri, with charges of $3.50. This car was received from the St. Louis, Iron Mountain and Southern at their interchange with our line near Dorcas and First streets, thence taken to the classification yards, what we call
419 the Horn yard, later taken up the Pestalozzi street main line to what we designate as the post-office yard, where delivery was made to the American Brewing Company. It was an inbound load of empty beer packages, which at that time showed a rate of $3.50 a car according to the tariff.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 33.)

I have freight bill dated March 4, 1910 covering a carload of beer shipped from the National Brewery at St. Louis, Missouri, consigned to Ralph T. Richards, Mobile, Alabama, with charges of $5.50. This car was loaded in the same yard in which the previous car described was unloaded and movement was over the Pestalozzi street main line, thence over the viaduct to the assembling yards on the river bank, there put in a cut of cars for delivery to the Wiggins Ferry at Lesperance street. The National Brewery is located at Eighteenth and Gratiot streets and quite a distance from us. There is no stock relationship or common ownership between it and the Anheuser-Busch Brewing Association. It is located about a mile from the Anheuser-Busch Brewing Association. There is no business reason which would make it an advantage to the National Brewery to do any railroad business close to the plant of the Anheuser-Busch Brewing Association unless they like the service that the Manufacturers Railway gives them.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 34.)

"Mr. Stone: Now without breaking into this examination, but in order that the examiner may understand it,—the old charge for outgoing cars loaded with beer was $5.50?

Mr. Moore: Loaded with any commodity.

420 Mr. Stone: Well, that included beer?

Mr. Moore: That included beer, yes, sir.

Mr. Stone: When the car came back with the empty kegs it was $3.50?

Mr. Moore: With Empty beer packages, $3.50.

Mr. Stone: That made $9.00 for the car going out and coming back.

Mr. Moore: Only we get about one car of returned empties for every three loaded cars going out, of beer. Just take the commodity beer alone, we do not get a carload of empties back for a car out loaded with beer, we only get about one carload returned empties to where we send out three carloads of beer.

Mr. Stone: Would not a flat charge of $4.50 going out and coming in be better for the Brewing Association than the old charge?

Mr. Moore: The Brewing Association has nothing to do with the rate, Judge.

Mr. Stone: Well, I will say for the Manufacturers Railway, are they not getting more now according to this last arrangement, $4.50 going out and coming in, than they got before?

Mr. Moore: It is a lower rate.

Mr. Stone: Oh, nominally it is. But you say you get $4.50 for the loaded car going out and $4.50 coming back—that makes $9.00 does it not?

Mr. Moore: Let me explain more fully.

Mr. Stone: Well, perhaps I don't understand.

Mr. Moore: To be very liberal now and to conform with your

ideas, two carloads of beer will be forwarded and the switching derived from them will be $9.00 under the present rate. For those two carloads, one carload of empties comes back. It does not average that, it only averages one carload to three, but I am applying it now against two; and they get $4.50 for the empties, that is
421 $13.50 for handling three cars. Under the old plan we would get $11.00 and $3.50, which would be $14.50 for handling the same movement."

I have freight bill dated October 25, 1910 covering a car of empty barrels from Stute & Company, St. Louis, Missouri, consigned to L. Gauch, Carlinville, Illinois, with charges of $5.50. This car was loaded at Second and Dorcas streets, moved over the Dorcas street line to the lower yards, up the Pestalozzi street line to the viaduct approach, thence over the viaduct to the river assembling yards, where it was put in a train of cars for delivery to the Wiggins Ferry near Lesperance street on the levee. That is within the middle zone, too.

(Freight bill offered and introduced in evidence as Complainant's Exhibit No. 35.)

I have freight bill dated March 2, 1910 covering a car of beer from Anheuser-Busch Brewing Association, St. Louis, Missouri, consigned to Anheuser-Busch Agency, Peoria, Illinois, with charges of $5.50. That car was loaded in the Second street loading yard, taken out over the Pestalozzi street main line, thence over the viaduct to the assembling yard, there put in a cut of cars for delivery to the Wiggins Ferry at Lesperance street. The Second street yard is a different yard than the Second and Dorcas street yard, they are one block apart.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 36.)

I have freight bill dated October 15, 1910 covering a car of packing drums from the St. Louis Basket and Box Company, St. Louis, Missouri, consigned to Gowan, Peyton and Twohy Company, Duluth, Minnesota. That car was loaded in the same yard
422 as the movement just described (Exhibit 36) and received exactly the same handling, the difference being that it was loaded by the St. Louis Basket and Box Company instead of by the Anheuser-Busch Brewing Association. There was no difference whatever in the character of the service or the charges exacted for it and there is no connection in any way between that consignor and the Anheuser-Busch Brewing Association.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 37.)

I have freight bill dated March 10, 1910, covering a car of beer wagons from Fred Wagner & Sons, St. Louis, Missouri, consigned to the New State Brewing Association, Oklahoma City, Oklahoma, with charges of $5.50. The movement of this car is identical with the movement last described, in so far as our service is concerned. There is no relation whatever between the Fred Wagner & Sons con-

cern and the Anheuser-Busch Brewing Association which would make it of advantage to them to do business near the Anheuser-Busch Brewing Association in order to use the Manufacturers Railway.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 38.)

This car was loaded in our Second street yard, the same yard in which the St. Louis Basket and Box Company's car was loaded.

I have freight bill dated July 31, 1910 covering a shipment of ice from the Anheuser-Busch Brewing Association, consigned to the Independent Coal Company at Second and Rutger streets, St. Louis, Missouri, with charge of $2.00. That is an intra-city movement commencing at the ice house situated just east of Second street and north of Arsenal street and was taken through the lower yard
423 over the Dorcas street track and cross-over to our main line on Second, thence north on Second street to Rutger Street where final delivery was made to the Independent Coal Company. This is one of the one hundred and sixty-seven (167) movements in the year classified as intra-city movements.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 39.)

I have freight bill dated June 12, 1910, on which Anheuser-Busch Brewing Association appears as consignee. The article described as "429 rice", with a charge of $1.00. That is one of the inter-work (inter-plant) movements from the rice store house to the brewery. The rice store house is located at Second and Pestalozzi streets and the brew house located at Ninth and Pestalozzi. The car moved over the Pestalozzi street main line for final delivery at Ninth street. This movement illustrates the class of movements described as inter-work (inter-plant) movement.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 40.)

I have freight bill dated November 25, 1910, on which Anheuser-Busch Brewing Association appears as consignee—no consignor. The article is grain weighing, load and empty, with charges of fifty cents. That movement was under the tariff which has been superseded by the new tariff naming a twenty-five-cent weighing rate. It was moved from the Wiggins interchange. It was weighed twice, loaded and empty. It was moved from the Wiggins connection to the scales, from the scales to the dry grain department located at Second and Pestalozzi.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 41.)

424 I have freight bill dated November 17, 1910 covering car of grease sent to N. K. Fairbanks, St. Louis, Missouri, weighing load and empty, with charge of fifty cents. The car moved from the Wiggins connection to the scales at the foot of Arsenal street. Of course the intermediate movement would be from the Wiggins con-

nection to the classification yard and from the classification yard to the scales after it was weighed, thence over the Dorcas street crossover to Second street, up Second street to N. K. Fairbanks. The empty car would be returned and weighed and then delivered back to the Wiggins. That is probably as extensive a move as we would make. The character of the service just described, so far as the weighing is concerned, is identical with the service described for car covered in Exhibit 41. The car received a longer handling under the switching charge, but the weighing movement was just the same and the charge was just the same.

(This freight bill offered and introduced in evidence as Complainant's Exhibit No. 42.)

The illustrative freight bills which I have produced cover in a general way characteristic movements, which together describe or illustrate all the movements which we make in the service rendered by the Manufacturers Railway Company, and we have tried to illustrate movements during the period of time which we call the reparation period.

Our tariffs name a rate of $1.00 for inter-works (inter-plant) switching. We do not consider that charge as remunerative for the service. The way that charge came to be fixed was brought out thoroughly in the May hearing. This charge was established by the St. Louis, Iron Mountain and Southern some twenty (20) odd years ago and has been in effect ever since and is the maximum
425 inter-work (inter-plant) switching rate exacted by all roads in St. Louis. That charge is the maximum charge made. There are less charges for inter-work (inter-plant) switching made by some lines.

There is no shipper except the Anheuser-Busch Brewing Association requesting or getting that class of service. One thing I might add to make it perfectly clear. This inter-works (inter-plant) switching as performed for the Anheuser-Busch Brewing Association involves the use of cars for which the railroad pays nothing. In other words, ninety-five per cent (95%) of the equipment used is either equipment owned by the Anheuser-Busch Brewing Association itself or it is equipment furnished by private car lines for which the Manufacturers Railway pays nothing and on which we can collect legitimate car service, and we do collect the legitimate car service.

I made an investigation to determine what portion of inter-work (inter-plant) service which we render would be represented by cars containing kegs and cases partly located at one wash house with the residue of the load taken to another wash house. I did not wish to trust to memory, so wrote it out in a statement. I went into that matter very thoroughly because of the prominence which was given it in our May hearing and I tried to qualify myself to give specific information about it. The facts shown in this statement were compiled from such records as were available and by consulting with the heads of the different departments attending to the loading and unloading of cars in these different detached plants. Ninety-five per cent (95%) of our inter-work (inter-plant) switching performed

by the Manufacturers Railway is in cars owned by the St. Louis Refrigerator Car Company. They are nearly all cars that cost the railroad nothing and in many cases were cars owned outright by
426 the Anheuser-Busch Brewing Association. This inter-work (inter-plant) switching is not directly a preparation of freight to go out or a preparation of freight for final delivery. The larger proportion of the cars which we do use in the latter class of service, which do go out, are owned by the St. Louis Refrigerator Car Company. The nature of that company, its organization and its relation, if any, to the Anheuser-Busch Brewing Association is already described in the previous record.

A fair analysis of this switching (inter-plant) would indicate that the interchange of cars containing both kegs and cases, some being partly unloaded at one wash house and the residue of the lot taken to the other wash house, will comprise about fifteen per cent (15%) of the total inter-work (inter-plant) switching. It must be considered that the car when made empty in either case is available for outbound loading without any additional switching. That is, when the car is emptied of its packages, just as it stands it is loaded out, and if I had not taken the car to that location to be emptied I would have had to send an empty car for the outbound load. The brewers' sprouts (that is offal) from the brewery, represents about fifteen per cent (15%); the movement of ice with which to ice the keg beer fifteen per cent (15%); the movement of empty kegs twenty per cent (20%), that is the kegs after they are washed and sent to the different places to be filled, and the movement of bottles and return movement of empty crates in the same car twenty per cent (20%); the movement of rice five per cent (5%), and then incidental movements too numerous to mention—about five per cent (5%). The inter-work (inter-plant) service as to cooperage and cases is not a primary handling. Such handling is a
427 secondary handling of an inbound load which has already paid the tariff rate and this inter-work (inter-plant) service would be done for an additional charge. This inter-work movement of bottles and returning of empty crates is naturally the same car loaded in each direction. In other words, $2.00 is collected for the round trip. The inter-work (inter-plant) movement in the rehandling of beer loaded at different plants into the same car would be an additional handling of an outbound load, finally being delivered to the interchange track of one of our connections. I consider in the handilng of brewers' sprouts, rice, ice, kegs and miscellaneous, that we handled an empty in one direction and that it is the most expensive service—I mean there is less compensation for that kind of inter-work (inter-plant) movement than any other.

Assuming that the six-day reclaim which is now allowed the terminal delivering lines at St. Louis is the average car detention of equipment used in such business, those roads operating under the per diem rules agreement, and receiving this six-day reclaim, have the equipment in use that number of days without cost to them no matter who owns that equipment. If it belongs to other companies than themselves, if it is equipment similar to the St. Louis Refrigerator

Car Company equipment, that is not operated under the per diem plan, they do not pay anything for the terminal use of that equipment either, no more than I do. Operating as I was, being compelled to pay car service after forty-eight (48) hours to either the St. Louis, Iron Mountain and Southern or the Wiggins Ferry, the Manufacturers Railway was put to an expense of $4.00 a car that other delivering lines would not have. This is based on the assumption that the six-day reclaim is a just and reasonable reclaim
428 and reflects the car detention average in the St. Louis terminals.

The result of my investigation of my own operation is that I have an average detention of four and one-half days on cars operating under the per diem rules agreement. I did not check my other equipment into that, I just segregated the equipment operated under the per diem rules agreement and checked my average detention on that. My opinion is that I handled equipment at least one day quicker than the other terminal delivering lines. This opinion is based on observation and my knowledge of the service rendered by the other lines and the territory that they cover, so that other terminal delivering lines are receiving just a little more from the trunk lines for reclaim than they are entitled to.

A great many of the tariffs now effective were filed prior to the decision of the Commission in this case. At the May hearing I was astonished at the lack of information these roads had, both as to the physical property of the Manufacturers Railway and its operation, also as to the amount of gross revenue that the Manufacturers Railway was supposed to be making, their estimate varying from two to four times as much as we really were receiving for our services. That led me to open negotiations with the executives of various lines to ascertain why they had taken the steps they had to cancel the tariffs and so on, and I found a number of instances where they frankly admited that had they known the conditions as disclosed, they would not have cancelled our tariffs and they would not have gone into this agreement to withdraw participation from the Manufacturers Railway in various rates.

I had such an interview with Mr. D. Miller, the President of the Burlington. He called in his attorney, I forget his name
429 now, but it is the chief attorney of the Burlington, and we discussed the matter on two different occasions. I also went to Mr. Gorman, the Vice-President of the Rock Island, and asked for an interview with him. I also interviewed Mr. Winchell of the "Frisco" and he referred me to Mr. Wood, their attorney. I had a personal interview with Mr. Britton of the "Cotton Belt." I took it up wholly with executives and they expressed themselves as satisfied that they had been too hasty. I also interviewed the Illinois Central, and had they not been pledged to this proceeding they probably would have immediately rescinded their action, and ultimately, before the decision was rendered, a majority of the lines did issue tariffs and filed them, although they knew they probably would be suspended, because others had been suspended. I probably saw others whom I do not recall, but that is a fair illustration of

what I did and why the new tariffs which are now effective were filed before the decision by the Commission.

After the Commission's decision was published the other lines were principally concerned in securing from the Commission short time authority to issue tariffs and there was very little discussion as to the amount of the rate, but there was a scramble to have their tariffs made effective as soon as possible. I had conferences regarding the coal rate, that is, to have it reissued on the same basis as it was before and on the same basis as has prevailed on coal in St. Louis for years on terminal lines.

Since the opinion in this case was handed down I have heard nothing to the effect that the defendant lines considered the $4.50 flat rate as unreasonable or excessive. After the Commission had rendered its opinion in this case some of the defendant lines
430 filed their tariffs that are now effective and a number of them wrote and secured that opinion before they would issue their tariff and I furnished it to some of them. I do not remember just the ones now, I remember the Louisville and Nashville did not execute a tariff until after the opinion. The Vandalia executed their tariff after the opinion; the Baltimore and Ohio South-Western, also the Big Four. There might be some others, but those four I distinctly remember issued their tariffs after the opinion was published. The file of the tariffs would of course verify that.

The record shows that when the Manufacturers Railway took over the operation of its own property that a general reduction of $1.00 per car in favor of the trunk lines resulted from their operation as compared to the operation of the property by the St. Louis, Iron Mountain and Southern, and the tariffs substantiate that also.

I have prepared statements showing the amount of switching done during the period of time covered by our other statements in this case, that is, showing both inter-work (inter-plant) switching and the $2.00 or intra-city switching. I believe at one time I said we had switched about 7,000 cars for that period under the $2.00 rate. I should have said 5,165 cars under the $2.00 rate and about 7,100 cars inter-work (inter-plant) switching.

(This statement offered and introduced in evidence as Complainant's Exhibit No. 43.)

This statement shows we forwarded from the Anheuser-Busch Brewing Association 1,367 cars on which they paid $2.00 switching and received for the same concern 734 cars on which that rate applied. We forwarded for other people than the Anheuser-Busch,
1,426 cars and received for other people 1,638 cars, all han-
431 dled on the $2.00 rate, making a total of 5,165 cars.

Some of them are, or the greater part of them are, movements of cars that the tariffs of the connecting lines do not provide an absorption to cover. This is the business referred to as coming in on "a spent rate." These cars represent about one-tenth of the interchange business. That is, the 5,165 cars handled on a $2.00 rate is about one-tenth of the total interchange business transacted for that period. Either the shipper or the consignee paid this $2.00

charge it did not come out of the St. Louis rate. This condition probably prevails on other roads making terminal deliveries. All roads have to use a local rate at times when the tariff does not provide an absorption. But in other instances I have in mind, the Iron Mountain for instance, they have a mileage tariff which allows them to secure for this service a very handsome revenue as compared to our franchise rate of $2.00. The inter-work (inter-plant) movements being performed wholly for the Anheuser-Busch Brewing Association, is paid for by them. That rate does not come out of the earnings of any other carrier.

I have prepared a carload statement from May 1, 1909, to December 31, 1909, showing the cars forwarded and received for the Anheuser-Busch Brewing Association, also for other shippers. Then I have a comparative statement on a carload basis showing the total number of cars handled in 1910 for Anheuser-Busch Brewing Association and for other patrons, also for 1911, including the month of December, for Anheuser-Busch and other patrons, this statement showing a percentage of gain for each class of business.

(This statement offered and introduced in evidence as Complainant's Exhibit No. 44.)

432 Exhibit 40 in the previous record is in part covered by the total statements as shown in this Exhibit 44.

Comparing the 1911 operations with 1910, the gain on Anheuser-Busch Brewing Association forwarded business was 2,147 cars; the per cent of gain .098. The received business for Anheuser-Busch shows an increase or gain of 1,021 cars; a per cent gain of .055. The forwarded miscellaneous business shows a gain of 956 cars; a per cent of .424. The miscellaneous received shows a gain of 2,027 cars; a per cent of gain of .631. The word "miscellaneous" means shipments to and from others than the Anheuser-Busch Brewing Association or its affiliated industries.

My records have all been made up from the beginning, counting the A. Busch Glass Works as a separate organization. My understanding was that it was a separate organization when I began to operate the Manufacturers Railway, but it has since been merged. But in this classified list which we will submit it shows the A. Busch Glass Works separately. In this condensed statement I presume it is included in the miscellaneous business.

The Dried Grain concern is not a shipper and we do not get any business for it. It only figures as inter-work (inter-plant) switching of brewers' sprouts to the dried grain house. Their product is sold and shipments are made by the Purina Mills under a contract which is still effective and the bills of lading are given to the Purina Mills and the Dried Grain Company has nothing whatever to do with the shipping. The Brewers' Dried Grain, as I understand it, is a part of the brewery, and inter-work (inter-plant) switching is done by the Manufacturers Railway, between the brew house and the dried grain house. That is all the business it originates for the Manufacturers Railway.

433 The shipments of the product of the Dried Grain Company have been bought by contract by the Purina Mills.

As soon as it is made it is bought, and they do the shipping, and the Dried Grain Company has nothing whatever to do with it. None of the Busches nor the Anheuser-Busch Brewing Association is interested in any way in the Purina Mills. I might add that the total gain in carloads for 1911 from all sources is 5,151 loads. That refers entirely to the interchange business. This entire statement refers only to interchange business and does not include any intracity or inter-work (inter-plant) movement.

This exhibit does not show in percentages the proportion between the total business done for Anheuser-Busch Brewing Association and that done for outside shippers. I do not think it fair to show that on a carload basis because our pay for this service comes out of the revenue and revenue is computed on tonnage. It was very expensive to carry this record both in carloads and tonnage and so I abolished the tonnage and carried it only on carloads, but on a carload basis the miscellaneous business will be approximately twenty-two per cent (22%).

As stated, I am not keeping the records at this time on a tonnage basis. I discontinued the tonnage record on account of the expense. I think a statement on a tonnage basis would show a greater percentage of miscellaneous business, but I do not consider that essential for the purpose of this investigation. We are doing a good volume of business for the general public and it shows in cars just how many cars we have handled.

Again referring to Exhibit 44 of this record, it discloses that month by month, with exception of March, 1911, November, 1911, and December, 1911, there was a steady substantial growth in
434 both the business of the Anheuser-Busch Brewing Association and from other patrons, but the miscellaneous or outside business has grown in far greater proportion than the business of the Anheuser-Busch Brewing Association. Taking into consideration the immense business of the Brewing Association and noticing that they have only increased 1,021 cars in received business, and the miscellaneous freight received has increased 2,027 cars, it gives an idea of the growth of the miscellaneous or outside business.

I might add that during all this period of 1911 and from March, 1910, the Manufacturers Railway has been operating under the cloud that has rested on the property because of this litigation, and from the fact that it has not yet been definitely and finally determined we could not get as much business possibly as we could have received had we been able to go out as a full fledged common carrier in every way and every respect, enjoying all the privileges that other terminal lines enjoy.

In percentage the Anheuser-Busch Brewing Association's forwarded business increased .098 and the miscellaneous forwarded .424. That is, the miscellaneous forwarded business showed an excess over the Anheuser-Busch's forwarded business in percentages .326, and in the received business the excess per cent gained of the miscellaneous business over the percentage of gain on Anheuser-Busch is .276. The miscellaneous business for the year 1910 was a substantial increase over 1909.

The proportion of total business handled for shippers other than the Anheuser-Busch Brewing Association or its industries has constantly and very materially grown since the beginning of the independent operation of the Manufacturers Railway. I have
435 prepared a statement showing the number of cars loaded and unloaded by zones, classifying the business according to the geographical territory in which the business was handled and the service rendered, which I thought would be of greater utility to all parties than the tonnage statement.

I classified the operation of the road into three zones, the middle zone being bounded by Lynch street on the north, Utah street on the south, Thirteenth street on the west, and what we know as First street on the east. Within this zone we do all of the service rendered to the Anheuser-Busch Brewing Association and a number of other shippers.

The north zone extends from Lynch street up to La Salle street, the south zone from Utah street to as far as we have constructed our main line and other switches.

This statement shows the various users of our facilities for each zone, the number of cars forwarded and received by them, and when a shipper would only show probably for one or two months, no matter what the volume of his business might have been in those one or two months, I put them under the general heading of "Various," so these statements do not show the names of every shipper and every user of our facilities, but they show the total number of cars outbound and inbound from March 1, 1911, to December 31, 1911.

(Statement covering business done in the northern zone and southern zone on same sheet offered and introduced in evidence as Complainant's Exhibit No. 45.)

This statement shows the names of various users of our facilities in the northern zone, 17 names, and an item called "Various," which includes a number of users showing the number of outbound
436 loads and the number of inbound loads and the total number of cars handled for that period to and from the zone described, the total number of cars handled for that period to and from the zones described being 1,808 cars, the out business amounting to 493 cars and the inbound 1,315 cars. My impression is there is absolutely no common ownership between any of these concerns and the Anheuser-Busch Brewing Association. There is none so far as the Manufacturers Railway Company is concerned. Lynch street is north of any of the Anheuser-Busch Brewing Association holdings so far as I know, even in real estate.

I would also like to call attention to the fact that the St. Louis Southwestern Railway Company is shown as having forwarded 94 cars and received 43 cars from this zone, and that covers patrons—how many I don't know, but a number of people, as individuals, no doubt, are served by them there. This business in the northern zone is a business with which the Anheuser-Busch Brewing Association has nothing to do. We do no business for Anheuser-Busch Brewing Association in the northern zone, unless you might call it business

for them when we take a car of ice from ice plant and deliver it to the Independent Coal Company at Rutger street. The movement of that description totaled only 167 cars in one year.

In the southern zone we have five shippers, the total inbound business amounted to 814 cars, outbound 94 cars, a total of 908 cars. The length of our Second street line in the southern zone is very short. None of these five shippers have any connection with Anheuser-Busch Brewing Association or with any persons who own stock in the Anheuser-Busch Brewing Association or the Manufacturers Railway. The same condition exists in the southern
437 zone as in the northern zone in that we have no occasion to serve the Anheuser-Busch Brewing Association in the southern zone.

I have arbitrarily assigned the limits of these zones so that within the central or middle zone falls all the service which we render the Anheuser-Busch Brewing Association and its allied industries.

(This statement offered and introduced in evidence as Complainant's Exhibit No. 46.)

In the middle zone we have 40 shippers and a number included under the title of "Various." The shippers entitled "Various" forwarded 98 cars and received 66 cars, a total of 164 cars in and out. None of these shippers under "Various" had any connection or relation with the Anheuser-Busch Brewing Association or any of its allied industries. My impression is that the A. Busch Glass Works and the Manufacturers Railway Company are shippers and receivers who might have connection with the Anheuser-Busch Brewing Association through common ownership. The previous record in this case shows what relation exists between the Manufacturers Railway Company and the owners of the stock in the Anheuser-Busch Brewing Association. None of the other shippers named on that list have any common ownership either with the Anheuser-Busch Brewing Association or the Manufacturers Railway. It is also true as to shareholders of either of those companies.

The statement shows that for the ten months ending December 31, 1911, the Manufacturers Railway Company delivered to connections 23,565 loaded cars and received from connections for this zone 21,541 loaded cars, a total of 45,106 loaded cars handled in this zone. We forwarded from this zone for the Green Tree Brewery 348 cars and received for them 294 loaded cars, a total of 642 cars.
438 This brewery is a competitor of the Anheuser-Busch Brewing Association. This statement shows that the American Brewing Company forwarded 641 cars and received 617 cars, a total of 1,258 cars loaded. It shows the National Brewing Company forwarded 84 carloads and received 32 carloads, a total of 116 cars. It shows the Louis Obert Brewing Company forwarded 331 loaded cars and received 220 loaded cars, a total of 551 loaded cars. It shows the Union Brewing Company received 73 loaded cars and forwarded none. The illustrative freight bills covered no movement to or from the Union Brewery, as I did not have freight bills for all of the shippers.

The Union Brewery Company is also known as the Stifel Brewery. It is a large producer of beer for city consumption, does not forward a great deal, but this inbound business is mostly handled in our post-office yard in the middle zone, sometimes at Thirteenth street—anywhere they want it in fact, but mostly in the post-office yard. The inbound business consists of barley and grain used for brewery purposes, also a number of tanks for storage purposes. They receive quite a number of them. I saw them unloading there in the post-office yard, and probably some coal. There is no outbound tonnage, as it is a large brewery for city consumption. Most of their trade is in the city. I do not believe it caters to outside business at all. Their inbound business is in a general way of the same character as came to the Anheuser-Busch Brewing Association. There is no business relation between the Union Brewing Company and the Anheuser-Busch Brewing Association, no community of ownership in the way of stock or otherwise. There is no business relationship between the two of any kind which would make it advantageous to the Union Brewing Company to locate its
439 plant within a mile of the Anheuser-Busch Brewing Association so as to get near the Manufacturers Railway Company.

In this middle zone statement appears the name of the St. Louis Refrigerator Car Company as a shipper, 24 outbound cars and 166 inbound, and the previous record shows that there is a common stock ownership between it and Anheuser-Busch Brewing Association—that is, Mr. Busch owns some stock in the St. Louis Refrigerator Car Company and owns stock in the Manufacturers Railway Company and in the Anheuser-Busch Brewing Association. The previous record discloses fully the relations existing between these companies.

Now, with regard to all the shippers named in our middle zone other than the Anheuser-Busch Brewing Association, I will state that the character of the service which is rendered to those shippers in the middle zone by the Manufacturers Railway Company differs in no respect from the character of the service which we render to the Anheuser-Busch Brewing Association. The Anheuser-Busch Brewing Association, Green Tree Brewery, American Brewing Company, J. H. Belz Provision Company, Morris & Company, National Brewing Company, Louis Obert Brewing Company, St. Louis Dressed Beef & Provision Company and the Union Brewery Company handle shipments that are termed "perishable." This perishable traffic is given preferred service. It is the common practice of carriers to so handle perishable commodities, and the Manufacturers Railway Company does likewise, so that in respect to perishable commodities which the Anheuser-Busch Brewing Association ships or receives we give it the same extent of preference that we do the other shippers and vice versa. I give it no greater service than the Terminal Railway,
440 gives the business when they get it, or the St. Louis, Iron Mountain and Southern gives it. We all give it preferential handling.

The statement shows that Charles Ehlermann Hop & Malt Company forwarded 14 cars. That was probably malt or grain that he had shipped in there to himself, inspected and reconsigned. I am

not familiar with his location. I know that he has no warehouse near the Anheuser-Busch Brewing Association. He uses only the public team tracks of the Manufacturers Railway.

I have a third statement headed "Distribution of Business Received and Forwarded, Covering the Period March, 1911, to December, 1911," which also shows grouped at the bottom, under a heading "Industrial" both inbound and outbound business by totals in the three zones with the percentage in each zone.

(This statement offered and introduced in evidence as Complainant's Exhibit No. 47.)

This statement filed as Exhibit 47 shows the distribution of business as between the different trunk lines on a basis of outbound and inbound, giving the total of the loaded cars interchanged with each line. It also recapitulates the business handled as per zone, and supplements Exhibits 45 and 46 in that respect. It shows that the middle zone furnished 94.23 per cent of the business handled by the Manufacturers Railway, the northern zone 3.79 per cent, and the southern zone 1.89 per cent, and that the proportions on a carload basis of the Anheuser-Busch Brewing Association's business, as compared with the business of the middle zone, was 84.28 per cent of the entire business of the middle zone. The northern zone and southern zone each represent 100 per cent business for other people than Anheuser-Busch Brewing Association people. This is for ten
441 months and it includes within those ten months the heaviest months for the breweries, when Anheuser-Busch Brewing Association's business is heaviest, and the smallest possible percentage of outside business would be shown within those months. Anheuser-Busch Brewing Association business from March to December, inclusive, will be at its greatest volume, and will represent the highest possible percentage of our total business. If you take it for the whole year, it will be a less percentage.

A number of additional concerns have shipped over our line since the last hearing in considerable quantities. The Hunkins-Willis Lime & Cement Company is one. The Pauly Jail Building Company had not shipped to any considerable extent and now ship very freely. George J. Fritz Foundry & Machine Company, Schultz Belting Company and Eau Claire-St. Louis Lumber Company.

Since the last hearing we have built a little over two miles of tracks. We have enlarged our river yard, which does not come in either zone because it is an assembling and storage yard. We have also done considerable work in the northern zone—more in the northern zone than anywhere else that relates directly to the public.

"Examiner Mackley: Let the record show that the statement figures at 80 per cent of Anheuser-Busch shipment of the whole property from those two Exhibits 45 an 46."

(Witness was shown an unnumbered Exhibit used in his testimony at former hearing, being a map or blue print filed by complainants showing a portion of South St. Louis in which the Manu-

facturers Railway operates, and showing in different colors
442 the lines of railway, respectively, of the Manufacturers Railway Company, St. Louis, Iron Mountain and St. Louis Transfer Railway.)

The principal point of interchange where we handle by far the greater percentage of our business is with the Wiggins Ferry Company, one of the lines of the Terminal Ferry Company, one of the lines of the Terminal Railway Association. The proper name of it is the St. Louis Transfer Railway, which is located at the foot of Barton street on the levee.

"Mr. Kirby: How far in distance approximately is the point of interchange from the foot of Dorcas street along which the Dorcas street main line runs?

Mr. Moore: I suggest that Mr. Finlay scale it and give it more definitely than an approximation—not from Dorcas, but from Lesperance street to Dorcas street here (indicating).

Mr. Finley: It is 4,800 feet, nearly a mile.

Mr. Kirby: Now what is the distance from your point of interchange to Lesperance street just referred to by you?

Mr. Finley: 1,700 feet.

Mr. Moore: 1,700 feet—that is one of the principal interchange points.

Examiner Mackley: What do you mean by that—that will not mean anything in the record—what street is it?

Mr. Moore: What I have described as the principal interchange point?

Mr. Kirby: That is at the foot of Barton street, the one you have just referred to.

Mr. Moore: Yes.

Mr. Kirby: In your last answer you referred to the point of interchange which you have already shown on this map and have described it as being at the foot of Barton street.

443 Mr. Moore: Yes, sir; and the track used between Barton street and Lesperance street."

The City of St. Louis owns the property along which our track along there is laid. The Manufacturers Railway has a lease from the City of St. Louis. That is, it is a combination of a lease and franchise which already appears in the former record. The lease has definite boundaries and the franchise has definite boundaries, but it is all on city property, either used under franchise or under lease.

That property on which is located our river yard and on which is located our track leading to the point of interchange with the Wiggins Ferry Company is on property in which the Anheuser-Busch Brewing Association has no interest whatever. Mr. Adolphus Busch has no interest in it whatever. The only proprietary interest of any kind in that line which does exist in favor of the Manufacturers Railway Company is the lease and franchise rights which I have just described, and they are owned by the Manufacturers Railway Company.

Last summer we had built up to this line of the St. Louis Transfer Company near the foot of St. George street. We have extended our switches and made an interchange yard with the St. Louis Transfer Company, the point of track intersection being nearer the foot of St. George street, which also is on property leased from the City of St. Louis by the Manufacturers Railway Company, St. George street being north of Dorcas street some distance. Our plan of operation is to use the last named interchange yard for receiving freight from the St. Louis Transfer Railway and the first named interchange for delivering freight to the St. Louis Transfer Railway.

We have our next point of interchange with the St. Louis,
444 Iron Mountain and Southern, the tracks having been changed since the last hearing, but it lies south of Dorcas street, probably 200 feet in this space along here which we have shown as First street, coming out into the Iron Mountain southbound track I think about 220 feet south of Dorcas street and what is known as First street.

Then we have another interchange track with the Iron Mountain at the foot of Arsenal street connected by a system of cross-overs with the tracks that we own and operate west of First street and south of Arsenal street. It is rather in Arsenal street and what would be First street. These interchange tracks last mentioned, being interchange tracks with the St. Louis, Iron Mountain and Southern, handle about 16 per cent of the business that we transact with other lines at St. Louis, but are not a necessity because we can reach all lines through the interchange first described between the Manufacturers Railway and the St. Louis Transfer Railway.

The movement from the storage yard would be from St. George street down to Arsenal street and back into the assembly yard, because of the fact that the viaduct runs down here and these tracks are on the west side of the viaduct and the storage yard is on the east side of the viaduct, so the deliveries must be taken down under the viaduct to Arsenal street, broken up and put into the classification yard on the east side of the viaduct, i. e., what in the former record is called our river yard. It has now become a classifying yard. The distance between St. George and Arsenal streets is between 2,500 and 2,600 feet.

At Barton street we now have a track connection with the Iron Mountain just east of Second street on the tracks coming out
445 of the St. Louis Lumber Company's yard, the Manufacturers Railway having acquired both the franchise and the physical property from this point just east on Second street in Barton street to Broadway, through private property in city blocks 742 and 740-S. This property and franchise have been acquired since the last hearing, so that we have a new point of interchange with the Iron Mountain at Barton and Second streets that we have acquired since the last hearing.

We can interchange with all roads through the St. Louis Transfer Company at the connection described as Barton street and the river or St. George street and the wharf, and that includes Iron Mountain business. We handle the Iron Mountain business through the inter-

change tracks at First and Arsenal for their convenience. I mean by this that the Iron Mountain does the switching for the Missouri Pacific, and the two companies, being practically considered one property, and their Lesperance yard their main yard, they can make up trains there and deliver along First street to me with their own power, and therefore will not call into service the Terminal Railway Association, for which they would have to pay something. I take their deliveries here, and deliver at the tracks in First street between Dorcas and Arsenal, and when necessary take them to the classification yards of the Manufacturers Railway between Arsenal street and St. George street on the river bank.

As a matter of operation it would be a little more convenient if we could receive and deliver all our freight at the same interchange point. There is a money advantage to the Iron Mountain in our interchanging business with them at First street rather than at Barton street through the St. Louis Transfer Company because of the fact that there is no other line service required in the inter-
446 change at First street delivery tracks (between Dorcas and Arsenal), while there would be another line interjected into it if we handled their business by way of the St. Louis Transfer.

Now, supplementing that, we have a franchise along the extreme western line of this wharf, or from Barton street north to Lesperance street, which we intend to build this summer, making direct connection with the yards of the St. Louis, Iron Mountain and Southern at Lesperance street, and then all deliveries will be made on the property here on the river, which is either obtained by franchise or by lease from the City of St. Louis.

There is a fence or enclosure along the track of land between Arsenal and Utah streets on the south, Broadway on the west, Dorcas street on the north and First street on the east, this being the enclosure of the United States Arsenal, bounded by Arsenal, Second, Utah and First streets. This is government property, into which we have tracks. The other property between Dorcas and Arsenal, First and Second street is not enclosed and is used mostly by the Manufacturers Railway for a breaking up yard. There also are plants located in that tract of property as shown on this map with numbers referring to a key already in evidence, showing the names of the plants and what they are.

There is a fence along Broadway, but that does not make an enclosure. The Second street end and the Arsenal street end is partly open. The Second street end is open and the Pestalozzi street end is open. The Second street yard is far below the level of Broadway, about twenty-six feet below. This yard is entered by means of a
447 switch from Second street into the Second street yard. There are no enclosures between the west line of Ninth street, Broadway, Lynch and Utah. About the only enclosures are the ones at Ninth street and Pestalozzi, but it is open all the time. There are gates that can be closed, gates for the service of railway tracks and for teams. That is the yard in which we produced an illustrative freight bill showing a car delivered to the Schroeter Coal Company. The other yards, Ninth and Dorcas, Eleventh and Dorcas, Thir-

teenth and Dorcas, Ninth and Pestalozzi, and the whole territory bounded by Utah on the south and Lynch on the north, Thirteenth on the west, and First on the east, having been described throughout as the "middle zone", are not fully enclosed. They are accessible to teams and the railroad. I mean when I say they have no enclosure that there are permanent means of ingress and egress, both for teams and cars, night and day.

The territory of the whole middle zone is interspersed throughout by public streets and alleys. It is cut up both north and south, east and west, and diagonally by streets and alleys. The buildings constituting the Anheuser-Busch Brewing Association are scattered throughout the middle zone, and separated one from the other by streets and alleys. There is no means of reaching any one division of those building- or plants, as you may term them, excepting by the use in part at least, of some streets and alleys operated under franchise by the Manufacturers Railway.

I have been informed that it is not lawful under the law of this State for an industry to operate railway locomotives and freight cars across a street or alley of the City of St. Louis, and I have been informed that they cannot secure a franchise to operate railroads over streets and alleys unless they are a common carrier.

There is conducted in the territory of the middle zone almost every kind of business that may be conducted in any other part of the City, interspersed throughout, some of them having been located there prior to the Manufacturers Railway. There are residences scattered throughout that zone that have been occupied for years by the same families. There is a city park known as the Lyon Park, also the United States Arsenal and the American Car and Foundry Company.

There is considerable area of the land covered by the middle zone which is owned by persons other than the Anheuser-Busch Brewing Association or by Adolphus Busch.

At the point where I have testified we now do our interchange business with the Iron Mountain there is no fence or enclosure.

The Anheuser-Busch Brewing Association is served by the Manufacturers Railway Company in the Second street yard, bounded by Arsenal, Dorcas, Broadway and Second streets, and more of the business of Anheuser-Busch Brewing Association furnished to the railroads is from this yard than from any other yard. The haul from this yard is shorter to the interchange tracks than from any other yard.

The Ninth and Pestalozzi street yard furnishes considerable business. Not as much, however, as what we call the Thirteenth street yard. The Thirteenth street yard is next in order of importance to the Second street yard.

You might say there are four yards that accommodate the outbound and inbound cars of the Brewing Association; that is, Thirteenth street yard, Eleventh street yard, Ninth street yard and Second street yard. These yards furnish by far the greatest proportion of the business from Anheuser-Busch.

449 An ice plant has been built since the last hearing, located east of Second street. It is located east of Second street be-

tween Arsenal and Dorcas streets, just north of Arsenal, and furnishes quite a little local traffic.

The Second street yard is used to serve shippers other than the Anheuser-Busch Brewing Association. Within that prescribed area we have a coal yard which serves the Schroeter Coal Company, the St. Louis Refrigerator Car Company, and what we call our "post-office" public delivery tracks. The Second street yard is a team track yard. Almost all of our tracks can be reached by team. There is no difference in the character of the service rendered in this yard for Anheuser-Busch and for other shippers, and no difference in the tariff charges. There is no preference given to the business of the brewery in this yard as compared with other outside shippers.

In the Ninth and Pestalozzi street yard we serve shippers other than the brewery whenever they specifically request that they have a car placed in those yards. We use our railroad on a common sense basis, that is, we use it so as to accomplish the greatest result with the least transportation effort, but if a shipper desires a spot location on a car, either inbound or outbound, then that car gets there. No matter whether he asks the car to be placed on property that we operate under trackline, direct ownership or under lease, the condition always holds good that the shipper or user of our tracks gets the car placed where he wants it.

The grade running along Pestalozzi and Dorcas streets west from First street and as far west as Thirteenth street is a little less than 4½ per cent grade. Tracks are laid on street levels. We find that in practice some shippers prefer to have their deliveries as far up the hill as possible, that is, as far west from First street as possible in order to overcome the grade. Thirteenth street is about at the top of the hill. Take, for instance, the shipment illustrated by freight bill to the Schroeter Coal Company delivered at the Ninth and Pestalozzi street yard. It is a business advantage to the Schroeter Coal Company to have this car delivered as far up the hill as possible, as when they have deliveries to make in the immediate territory west of Thirteenth street it is to their advantage. They are now seeking to locate west of Eleventh street instead of using these yards down here at Second and Dorcas, for the reason they want to get up on the hill. There is no difference in the character of the service which the Manufacturers Railway Company renders in the Ninth and Pestalozzi street yard to shippers other than Anheuser-Busch. The rates are the same. There is no physical difference in the character of the movements or the expense of rendering the service.

Fifty per cent of the business handled in the Ninth and Dorcas street yard is Anheuser-Busch business and about fifty per cent handling for outsiders. We serve other breweries in that yard.

The freight bills introduced illustrate some of the movements for some other breweries in that yard. There is no difference in the character of the service which the Manufacturers Railway Company renders in that yard to other competing breweries in South St. Louis, and that which it renders to the Anheuser-Busch Brewing

Association, no difference in the rates and no difference in the treatment accorded the different shippers.

The Eleventh street yard is practically a continuation of the Ninth and Dorcas street yard. They might be considered as a unit, and what I have said with reference to the Ninth and
451 Dorcas street yards will apply to that entire systeem of package.

The longest movement that we render in our service to the Anheuser-Busch Brewing Association is from the Thirteenth street yard to the delivery to the St. Louis Transfer Railway, or vice versa. We serve the Obert Brewing Company mostly in the Eleventh street yard. The Cramer Dry Plate Company uses the Thirteenth street yard almost exclusively for their business. There is no difference in the character of service we render in the Thirteenth street yard for the Cramer Dry Plate Company and that rendered for the Anheuser-Busch Brewing Association. There is no difference on similar classes of freight in the character of the service rendered by the Manufacturers Railway Company in the middle zone for shippers other than Anheuser-Busch Brewing Association as compared with that rendered for the Anheuser-Busch Brewing Association—no difference in the charges.

Since the last hearing we have established a new public delivery yard, a part of the track where the Stecher Cooperage Company was located at the time of the last hearing. The Stecher Cooperage Company moved to Barton street.

There is nothing in our tariffs which provides for an absorption of charges for inter-plant service, never has been in any tariff which has been published since I have been there. The intra-city movements have nothing to do with other lines or with absorptions. They are purely local switching movements.

Cross-examination by Mr. Colston:

Our accounts are so kept that we know each month what the operating expenses are and what the operating revenues are, and what the other results of operation are. They are kept under
452 the rules of the accounting circulars of the Interstate Commerce Commission, which provide for a monthly report to them which discloses the main feature of the operations and results of the operations condensed into a fiscal year report as of June 30 of each year, and then, because of the fact that we have a corporation tax to look out for, we make a supplemental closing as of December 31 of each year. We do not close our accounts completely for each month—that is, speaking as an accountant. We do show an exhibit of the business for each month, but do not bring it down to what would be termed a final balance sheet. We do draw statements of operating revenues and operating expenses by months and do not do that by weeks.

The Manufacturers Railway has been operated by its own organization since January, 1909. Prior to that time the Iron Mountain operated the line under leases which had been filed in the previous

hearing of May, 1910. In making our report for 1909 I used estimates based on the Iron Mountain's operations, such estimates as I could procure. They were statements rendered by different traffic lines showing the number of cars on which they were paying absorbed switching, and in that way I arrived both at revenue and the number of cars that were moved; also the payrolls of the road, such as I could find, and the reports of materials used. I took that into my account as best I could. I made an invoice of all the material that was on hand and really presented the fiscal year of 1909 for just what it might be worth, as explained in my annual report for 1909. It is not a satisfactory report and hardly fit for comparison with 1910.

When I came to the Manufacturers Railway, having absolutely no knowledge of any conditions except what I had gained
453 by a brief review of it, I had to become familiar with a great many things in a very short time, and I applied myself to overcome the conditions that were most essential, in my judgment, and the accounting was not the most important condition to which I applied myself to analyze and understand. Such accounts as I finally embodied in my annual report, and from which I have started the record of the Manufacturers Railway were kept by Mr. Rassfeld, the Secretary and Treasurer of the Manufacturers Railway. These were accounts based on receipts rather than on earnings, and did not conform to the accounting plan of the Commission. However, I will say that he had blanks prepared and had engaged railroad accountants to transcribe the records into railroad accounts from such accounts as he had, which was a sort of a ledger and a cash book. He paid the salaries of clerks and railroad employes by cash. I found that certain other railroad employes had been paid by the Anheuser-Busch Brewing Association. Those records they allowed me to see, and from such data I started the accounts of the Manufacturers Railway. That was mostly my individual work. I did that myself before turning it over to anybody, as an auditor for the company.

In ascertaining the expenses of the months of the fiscal year ending June 30, 1909, I gathered from the leases certain data as to what the Iron Mountain undertook to do. From Mr. Rassfeld's records, described, and from the records of the Anheuser-Busch Brewing Association, I obtained the balance of the information that went into the report of the fiscal year of 1909. The expenses for these months are based on records of actual disbursements so far as they were kept. I do not think all the expenses were shown against the road that should have been charged the road. For instance,
454 there were some salaries. Oftentimes I found that the engines were coaled, and by inquiry I ascertained that the engines were coaled from coal owned by the Anheuser-Busch Brewing Association and no debit made. I found that material was often paid for by Anheuser-Busch Brewing Association and used for railroad purposes. I did not have access to the books of the Anheuser-Busch Brewing Association. The information was given to me in the form

of statements taken from the books of the Anheuser-Busch Brewing Association. They made no statement covering material and coal.

I have answered two or three times that I based the reasonableness of the rate from my viewpoint, on the cost of handling, on the services we render, and compared that service and all of these things with the other terminal lines' service.

There were lines that did obtain part of the business we control that did not file tariffs. They obtained a substantial part of the business. The L. & N., for instance, was not punished because they were one of the last to file their tariffs. The Southern Railway received quite a bit of business before their tariff was filed. The line that paid the allowance would get the business if there was no hope of reparation.

The mileage which we reported on page 13 of the annual report for the year ending June, 1909, was correct in so far as the information went which we had at that time. This is also true with reference to the statement of current assets and liabilities. There has been some material change made in current assets and liabilities. If there were any errors in the report they have been subsequently corrected by proper bookkeeping records, and are reflected in the report of 1910.

I am not sure whether there is any error in the report that
455 you submit concerning current assets and liabilities—if it is an exact copy of our final figures to the Commission. I know at the request of the Commission there were certain changes made in the 1909 report. Just what they are I do not know, because beyond setting up the general form of account I have not been doing the detail work myself. Page 29 of our annual report for the fiscal year ending June 30, 1909, as we have it, is correct according to the information and records of our office. I won't answer as to your copy because I do not know what corrections were made—there might have been some. It is correct according to the information which we have in our books.

The total cost of the road to June 30, 1908, was $254,869.65, and so reported. All of the costs of the record were not reported at that time, that is, other items were found afterward that should be charged to that account. So far as our record goes we would have to accept that as a correct figure. I do not know of any errors in that. During the year ending June 30, 1909, we expended and charged to capital for the road the sum of $147,924.32. This sum was expended and charged to capital for road and itemized correctly in our report for the year ending June 30, 1909. Our expenditures for equipment prior to June 30, 1909, were $46,020. For the year ending June 30, 1909, we charged equipment to capital account the amount of $12,331, this being for steam locomotives. Our books did not show any general expenditures in cost of road and equipment or capital account on June 30, 1908. It was all supposed to be in that one lump sum of $254,869.65 down to June 30, 1908. During the year ending June 30, 1909, we did make general expenditures such as law expenses, expenditures for stationery and printing, inter-

est and commissions and other expenditures not itemized,
456 which were charged to capital account and amounted to $2,365.77, so that the total cost of our road and equipment, including general expenses, down to June 30, 1909, was $463,560.74. I do not know of any error at this time that exists in those figures.

Turning to income account, page 39, the revenues reflected in this $138,287.86 were computed on statements which at that time were kept by the traffic manager, showing the amount paid by the different lines for absorbed switching of the Manufacturers Railway for the period covered by the report and included the revenues of the Manufacturers Railway for the entire fiscal year. These items are correct except they were computed upon a collection basis rather than on an accrual basis. The tax graded as shown on page 39 of the income account, to-wit, $3,987.75, is correct according to our books. It is correct according to the facts so far as I know.

The same is true as to the miscellaneous rent shown on page 41 and detailed on page 75 amounting to $7,654.52. The same is true as to interest charges, $14,932.79. The item of $21,308.30 as shown in profit and loss account on page 43 was the profit and loss balance from the books kept by Mr. Rassfeld, Secretary and Treasurer, and resulted from the operations under the lease for the year ending June 30, 1908. The amount of general depreciation of $43,772.91 for the year ending June 30, 1908, is shown on page 43 and is the depreciation in that part of the property which was represented by expenditures of $492,793.97, shown as expenditures for road on page 37 of the report. This item of depreciation, to-wit, $43,772.91, was an estimated amount made in an effort to put the road on a correct cost basis. It was cold blooded and intended to be used in that way
457 because the road had never been depreciated, the tracks had never been depreciated, the structures had never been depreciated and it was not representing or reflecting its original value naturally, and a percentage of depreciation on tracks is, I believe, allowable under the law, and that did not seem to be an unreasonable depreciation and I was not criticized for it by the Commission. This depreciation was about one per cent (1%).

I had a reserve for depreciation of equipment in the sum of $6,332.22 which was in addition to the general depreciation fund. The ratio of setting that up has been changed since. I was told when I came to the Manufacturers Railway that the engines were beat out in about five years and I arranged my depreciation accordingly. I find that the engines after being operated three years are in mighty fine shape today and I have reduced my rate of depreciation and will soon further reduce it next year as the only object in making this reserve is to replace the equipment that is worn out in the service, and gradually I will get that down to where it will just represent what it should represent, a replacement fund.

Most of the item of $6,332.22 was raised by charges to operating expense during the fiscal year ending June 30, 1909, and included in operating expenses a sufficient amount to take care of that depreciation. The item of $1,570.53 which is shown as estimated taxes represents taxes accruing and not paid. As first I became wonder-

fully involved in the tax question with the Manufacturers Railway. It took some little time to sift it out and it really took the report of 1910 to get the taxes on an absolutely correct basis. The item of $1,570.53 was purely an estimated figure. The amount should be somewhat larger.

As to this item of $43,772.91, I reserve the right to cor-
458 rect my testimony thus far. That amount may not have been all applied to depreciation; it may have been some original entry dissolving into other accounts, I am not quite clear, but if there is any such disposition it will be disclosed in the subsequent reports. Page 93 of my report for the fiscal year ending June 30, 1909, showed a great many more loaded cars handled than empty cars, but in our later reports, both the year ending June 30, 1910, and for the year ending June 30, 1911, we show a greater number of cars handled empty than were handled loaded, and is stated in my reports—this report was made on an approximation very largely. Any details other than financial matters and statistics were approximated and estimated and we frankly admitted that we did estimate and approximate some of these statistics. This was purely an estimated figure in so far as empty cars were concerned and was arrived at after consultation with those who had been handling the property, and I think it was rather a bad guess. However, it is just a guess and was so reported as an estimate. It hardly looks possible that we should have handled more empty cars in revenue service than loaded cars. At this time no explanation occurs to me. When cars loaded with empty beer packages are brought in, those cars ordinarily go out with a load of beer or other freight if handled under revenue. As far as I can see now, we should handle more loaded cars than empty cars.

The description of equipment as it appears on page 101 for the fiscal year ending June 30, 1909, is substantially correct, and our report of locomotives as made on page 103 is substantially correct. Page 113 of our report, which shows the number and price of new ties laid during the year and the number of tons and weight per yard and average price at distributing point of steel rails
459 laid during the year, and the number of tons of coal burned during the year and the average cost at distributing point are on an estimated basis. I do not know definitely what the arrangement is under which the Iron Mountain does the inter-work switching for the American Car and Foundry Company. The American Car and Foundry Company own some locomotives. I know that they operate tracks within their plant, but do not know that it owns them.

As previously explained, the report for 1909 is not an accurate report. It was built up largely on a period at which time I had nothing to do with the road; it was made up from such information only as I could find and put together. I have written the Commission to that effect, fully explaining that that was just a beginning and not a fair basis for a comparison as the years of 1910 and 1911 would be. It does not include all of the expenses that really went into the track, but it does include all that I could get hold of and assemble

and report. The fiscal year ended June 30, 1909, is not a fair comparison to apply to the operations of the road in 1911. I came here in February, 1909, the last part of February, and had to do a great deal of work in giving the current work which was of benefit to the property more attention than the accounting. The report is intended to dodge nothing. I explained fairly everything that was capable of explanation and wrote to the Commission afterward telling them that the report was not a fair basis for comparison and did not reflect the accounts as they would in subsequent reports. February 19th was the exact date that I came to the Manufacturers Railway Company.

The item of Superintendence consists wholly of salaries. Salaries under the item of Superintendence was not increased, but probably the distribution of the salary was different—the salary
460 was increased $15.00 a month. The road master gets $140.00 a month now and when I first came here he was getting $125.00 a month. The road master's salary is the only expense charged to this account, except a stationery expense or something like that. All of the accounts in maintenance of roadway and track were increased very materially, and the analysis of that is reflected in our vouchers and distribution of payrolls and distribution of vouchers, all thoroughly reflected and capable of being verified by the Commission if they care to verify it.

The Manufacturers Railway paid for the ballast, rails, ties and other track material for the six months of the fiscal year ending June 30, 1909. The Anheuser-Busch Brewing Association did not pay for anything that is in these books. They may have paid for a number of things that are not in my books that affect the railway. Only such items as the railroad paid for are included in that amount of $6,220.17.

The large increase in Superintendence for maintenance of equipment from $290.00 in 1909 to $3,013.26 in 1911 is due to the fact that I have a master mechanic and a more substantial force to keep up the equipment now than they had at that time. The master mechanic is now paid $175.00 a month and his salary is charged to maintenance of equipment, that is, his entire salary is charged under the account of Superintendence. The other $900.00 included in that amount is made up of the salary of assistants to the master mechanic and possibly a small stationery expense. I am not sure but what the Iron Mountain kept up the equipment prior to the time I secured the services of this master mechanic and his assistants. The fact of the matter is that they operated their own equipment
up to the time the Manufacturers Railway bought its first
461 engine. When the Manufacturers Railway Company in 1909 introduced its engine into the service, it was taken care of by the master mechanic of the Anheuser-Busch Brewing Association and charges were made against the railroad for all work which it did. The railroad paid it and charged it to the maintenance of equipment account. I presume that the charge of $290.00 which was made for the fiscal year ending June 30, 1909, represents charges made by the Anheuser-Busch Brewing Association for the services of

its master mechanic. My impression is that we charge to that account our car inspectors.

In the account equipment depreciation, on account of which we charged $9,396.14 in 1911, and $18,254.90 in 1910, is the depreciation of equipment based on the rate of twenty per cent (20%) until the end of this fiscal year, that is, based on the original cost of the equipment. The original cost of our engines is approximately $13,000 and I presume they would scrap for eight or nine hundred dollars. I believe now that ten years with the upkeep that we give our engines would be a fair life. Our engines move at a rate of about six miles an hour, they are limited by ordinance for a great part of their journey. I am not a scientific man and do not know how the life of an engine varies with the speed at which it usually runs. I do know that an engine in terminal service has a shorter life than a road engine on account of the many stops it has to make, short quick stops—the nature of the track over which it has to travel, and particularly with our road, there being so many frogs and switches, crossing grades and curves that it is hard on equipment. I may be wrong when I say that ten years would be the life of these locomotives, I am experimenting to find out. For myself I am satisfied that the life of a switching engine in a large ter-
462 minal is shorter than the life of a road engine. The damage done in crossing over switches, frogs, etc., is that of impact. Not being a scientist I cannot discuss it scientifically. I know the wear and tear an engine gets when it crosses over such heavy grades as we have.

In the item of Administration, under the head of general expenses, to which account we have charged $39,041.41 for the year ending June 30, 1911, and $38,416.31 for the year ending June 30, 1910, we included the administrative officers for each of those years and a reserve to meet the expenses of this rate litigation in which we are at present involved. I am not at this time prepared to say what amount was charged to that account in each year as a reserve for this litigation because it had been changed from time to time to meet the ultimate requirements of the fund.

The percentage that we used in computing depreciation of equipment will have to be further reduced; we are setting up too much of a reserve fund for that purpose.

The amount of taxes on railway property in Missouri is fixed by the Board of Review or Equalization; it is purely on the railroads' physical and intrinsic value; they set the amount and the taxes that are to be paid. My remembrance is that for 1910 it was something like $6,000.00. The receipt attached to exhibit shows just exactly how the State Board of Equalization assessed us. We had more property in 1910 than we had in 1909; we had more in 1911 than we had in 1910, but we succeeded in convincing the State Board of Equalization that they were taxing the Manufacturers Railway too high and the taxes paid for 1911 amounted to over 11½ cents per car handled. The nature of the increase and the property
463 which was covered by the taxes of 1911, and which was not embraced in the taxes for 1910, was the different construction

work done since 1909. This different construction work is added to each tax return and consists of buildings, switches, spurs and main tracks, almost wholly in the north zone as previously described and on the river bank and in the south zone. Very little track work has been done in the middle zone, and the amount of those expenditures is shown in our report of expenditures for the years 1910 and 1911 to the Interstate Commerce Commission. There is no property included not used for railroad purposes at this time.

Part of the line which branches off from the Second street line and runs down toward De Kalb street and then across Cherokee and Zepp streets to Potomac street was included in the 1911 taxes, and a part of it will be in the 1912 taxes because it was constructed after June 1, 1911. The easterly line south of Utah street, which is intended to be a part of our projected main line to the south, is now used for railroad purposes. The Clarksville Cider Company load and unload freight there, also the Klauber Junk Company load and unload freight there, south of Cherokee street, on that line. Hunkins-Willis also use that track. Hunkins-Willis Company handled 257 cars, A. Klauber Sons Iron and Metal Company 48 cars, and Clarksville Cider Company 36 cars.

On our industrial tracks extending out Utah street the Fidel-Ganahl Lumber Company handled 541 cars. My impression is the Ladenberger Lumber Company handled 23 cars during the ten months covered by our Exhibit No. 45.

None of the property purchased incident to the extension south of Utah street, amounting to something over $300,000.00, is
464 now in use for railroad purposes, and no part of that property is included in the taxes which we have shown on our Exhibit No. 1, amounting to $6,956.48. I have included the interest on that investment as a separate item, and admit that it is a mooted question as to whether it would be allowed as an operating cost or not; that is the reason I separated it, and the interest on that property not used for railroad purposes, as included in our exhibit, amounts to 25¾ cents a car. Only a part of the business was handled over this property. Some of this property is adjacent to the extension through to Zepp street, the southeast corner of Cherokee and De Kalb streets, and certain other property lying in the west line of De Kalb street—that is, only a small part of the property, but some of it is located where I have described it. Our tracks are not on any part of that property.

The property bounded by Utah street on the north and Cherokee street on the south, through which the main line extends from the southeast corner of Second and Utah to the center line of De Kalb and Cherokee streets, is a part of the property used for railway purposes and not owned by the Manufacturers Railway, and is not included in any of the leases made to it. The length of our line over it is approximately 900 feet. Another part is at the foot of Dorcas street, east of the Iron Mountain tracks; our viaduct is built over property owned by, I think, Adolphus Busch personally. The length of that line between property lines is about 450 feet—say 425 feet.

Another part is property located on the northeast corner of Dorcas and Second streets, used as a crossover from the Dorcas street line to the Second street line, approximately 500 feet of track with a spur of about 300 feet, is property being used by the Manufac-
465 turers Railway Company, but not owned by it nor leased by it. I don't know in whom the title rests; it is either in Anheuser-Busch Brewing Association, August A. Busch or Adolphus Busch, and it belongs to either one of those three. The spur and the crossover line of which I speak are substantially parallel, cutting off a triangular piece of property about 200 by 250 feet.

Another part, following up the Dorcas street line to Ninth street, the line would run through the northeast corner of Ninth and Dorcas streets, which is private property. This property belongs to either Adolphus Busch, August A. Busch or the Anheuser-Busch Brewing Company. The lease would not cover it, but I think it belongs to the Anheuser-Busch Brewing Association.

Another part, proceeding up to Barton street, we have two parallel spur tracks, a track running east and west from Second to Broadway, through property that is owned by Adolphus Busch and leased by him to the Eau Claire-St. Louis Lumber Company. This track belongs to the Manufacturers Railway and is excepted from the lease to the Eau Claire Lumber Company. We purchased this track from the St. Louis, Iron Mountain and Southern—the original track with a switch intersection in the center of Barton street, just east of Second street and extending over Third street to Broadway. That was the track of the Iron Mountain over which they formerly served that piece of ground and the Eau Claire-St. Louis Lumber Company at Trudeau street.

Another is at the northeast corner of Second and North Trudeau; we have a spur track through property owned at present by Adolphus Busch. On this particular piece of property I caused to be
466 erected a sign saying that so many feet of that property was for sale and to inquire of the Manufacturers Railway Company, but we do not own it.

The next piece of property is located on the south line of Park avenue, between the Iron Mountain tracks and Kosciusko street, owned in fee by Adolphus Busch and used by the Manufacturers Railway as a public yard, it having some 2,500 or 2,600 feet of team track, and the northeast corner of Second and Park avenue, where the line crosses over to get to that yard. That covers all of the property used for railway purposes that is not owned or leased by the Manufacturers Railway.

In this last piece of property referred to as located on Park avenue between Kosciusko and First streets we used the team track in getting into the John Nooter Boiler Works. It goes into the property owned by Adolphus Busch and leads to the John Nooter Boiler Company. The St. Louis, Iron Mountain and Southern Railway had one spur track through this property. This track was taken up about six months ago—it was not fit for service.

We have succeeded in building up a business that averages 180 cars a month on North Second street, and we think we can very ma-

terially increase that from the location of industries and the location of freight depot and freight yard. I have practically sold a part of that property to the General Paper Stock Company, at the corner of Rutger and Second streets, and they promise from seven to nine cars a day to the Manufacturers Railway. They are not now located on any railway. We expect to have industries located there (south of Utah street and east of Second street), in addition to those that may be there. We have located south of Utah street and east
467 of Second street the Diesel Engine Company, occupying 7½ acres, and it will make business. We expect to be of general use to anybody that wishes to use a line that is up on the hill rather than a line which is inaccessible. The Medart Pulley Company can make use of such a line. They have service now, I believe, with the Western Cable Railway, but they have requested us to put in a switch to their plant. I cannot say how high the Medart Pulley Company is above the Iron Mountain tracks. There is, however, a short grade from their plant down to the Iron Mountain, and I do not believe that the Iron Mountain has any team track in that immediate neighborhood. The main hope of the south line would be to build up business that is not there rather than to profit from such business as may be there at present.

The Interstate Warehouse and Realty Company is incorporated under the laws of the State of Missouri. All stock has been issued. I cannot give the names of many of the shareholders; I know that I am one of them—however, not a beneficiary shareholder. I control the balance of power in that company as a stockholder. The president of the company is Mr. Richard Muehlberg; he is the traffic manager of the Manufacturers Railway and the Anheuser-Busch Brewing Association, and I believe he holds some office with the St. Louis Refrigerator Car Company. The Interstate Warehouse and Realty Company was financed by the Manufacturers Railway; the ownership of that company shows in our balance sheet. It now appears in the report of 1911, page 84, under miscellaneous investment B-6, division A, physical property described on page 17. It reads here $294,794.11. There are some charges in addition to the book value of the property, and the balance of the amount
468 shown in my cost figures is made up of the overhead expenses of projecting, surveying and obtaining the franchises for the southwestern extension. The money of the Manufacturers Railway invested in that concern was originally borrowed from the St. Louis Union Trust Company; I gave them a note at 5 per cent. When that note became due I borrowed the money from Adolphus Busch, giving him a note at 5 per cent. I think the note ran just a year. There is a connection between that item and the amount of $318,472.74 which we show as representing property incident to extension south of Utah street, and I explained that the difference between the actual book value of that property and this figure here represented the overhead cost of the survey of the southwestern extension and the obtaining of the franchises and other expenses.

In the same balance sheet in which we show the item $294,794.11, which covers in part the proposed extension of our road, we show a

net balance due from agents and conductors of $275,504.52. We have one agent only. It is printed in plural, but our agent is Mr. Charles E. Coons, and that amount is made up of the reparation claim, in addition to the other charges to our agent for services that have been rendered. He collects everything in the way of transportation charges, or tries to. It is so much on account of the pending litigation. It represents the uncollected part of the service which we have rendered, for which we incurred operating expenses, and for which we have made no collection; but we have been collecting more or less for that service. That amount includes all of the reparation claim, and in addition to the reparation claim it includes the current bills which are continually being paid and added to. Eliminating the current bills which are uncollected and considering only that part which we may term the abnormal part of the account and which represents reparation, approximates nearly $270,000.00 and about $5,000.00 represents uncollected current bills. That amount of $270,000.00, or whatever the exact amount may be, which we term the reparation account, represents services that we have performed and for which we have incurred operating expenses and for which we have made no collection at all. That is, we have not collected $2.00, or any other amount, either from the shipper or receiver of the freight, but we have charged the entire amount to the reparation account. I cannot approximate how much of that amount represents shipments handled for the Anheuser-Busch Brewing Association. You might approximate it at about seventy-five per cent (75%)—nearer seventy-five per cent (75%) than eighty per cent (80%), because much of the business included in that account was handled at the lowest rate of the old tariff, to-wit, $3.50 a car, while the general outside business included in that account comes under the tariff rate of $5.50 and $4.00.

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The interest on operating capital, to-wit, $6,106.36, is computed at five per cent (5%). This capital was borrowed from Adolphus Busch and the South Side Bank. It is not true that we have collected $2.00 per car on outgoing and incoming freight on these shipments in dispute interchange with the railroads. We have collected nothing on these shipments in dispute, and I did not state in my former examination that we were collecting $2.00 per car on such shipments.

Mr. Stone: With the permission of counsel and the Examiner, I want to call your attention to some testimony. Perhaps we misunderstood it, but I want to quote from page 639 of your former testimony. I will read it over and give your answers, and then let you state what you meant. This is an examination by myself, beginning on page 639, the third question from the top.

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This was only as to the $2.00 charge and had no connection with the reparation account. This $2.00 charge is the charge fixed by the ordinance, the said charge being on business not absorbed in the tariffs. In the last year there were over 5,000 such movements upon which the railroad tariffs did not provide for an absorption. That is the traffic that yields the railroads a revenue less than the fixed

minimum that they specify in their absorption tariff, or strictly non-competitiv business on which they will not absorb, and other arti-cles that a re excepted from their absorption, as outlined in their ab-sorption ta riffs. On such shipments as were not absorbed under the tariffs we collected $2.00 a car, that being the regular charge under ordinance 22025. We performed the same movement with respect to that cla ss of traffic as we did where there was formerly an absorp-tion by th e railroads. We still have the same traffic and handled in the sam e way, although all lines now have absorption tariffs filed.

The cor tract which we made with the Cotton Belt Railroad was offered to the Chicago and Alton, the Tower Leaf, the Frisco, and C. & E. I., and I called the attention of Mr. Campbell of the South-ern Road to the contracts, and I believe I gave him copies of them. The contr acts were in fact offered to the Southern Railway and the M. K. & T. and the Cotton Belt.

When I speak of the spent or used rate on lumber shipments, or other ship ments, I mean the rate that does not provide an absorp-tion of th e Manufacturers Railway. Some roads' tariffs provide a cer tain amount as a maximum absorption on lumber, and

471 tha t is frequently used by the intermediate lines between the lin e carrier and the Manufacturers Railway.

We hav e included only in our claim for reparation such traffic as the tar iffs allow, and shipments moving on a spent rate would not come under the reparation claim. The service that we perform in the ha ndling of the spent rate shipments is the same as we per-form on o ther shipments.

I believ e it is a fact that, eliminating the trunk lines and the Terminal Railroad Association, which is owned by and controlled by the tr unk line railroads, there is no other switching railroad in the City o f St. Louis which is a member of the American Railway Associatio n. There are other railroads, whether incorporated or not, and there are other physical appliances which do switching in the City of St. Louis or which are engaged in moving freight from one part to an other on rails. The American Car and Foundry Company move cars within their yard limits; the Lemp Cable Road or West-ern Cable Company move cars by means of cable and by locomotives, and to my knowledge neither of them is a member of the American Railway Association.

N. K. Fairbanks & Company was the large shipper that threat-ened to ta ke business away from us unless we put it on the average car servic e agreement. The Manufacturers Railway could not have obtained the average agreement under the conditions that we were working without sustaining a very substantial loss. If we had wanted to pay th e price we could have had all the privileges for the Manu-facturers Railway which the average agreement would give. The Manufact urers Railway could have operated under the average car service ag reement as a customer of the Terminal Railway Associa-tio n, but we would not have obtained advantage by opera-

472 tio n under the average agreement as compared with opera-tio n under the regular rule outside of the average agreement; we would still be paying car service as a shipper to the St. Louis

Transfer Railway Company, and our customers would not have received any benefit from that. Not being a shipper of freight, I do not know whether I would be eligible to become a member of the average agreement or not, but we are not a shipper of freight—we are a common carrier, handling freight. The railroads treated us as a shipper of freight. Shippers and receivers of freight are admitted to the average car service agreement under the conditions outlined. The equipment on which we collected car service and for which we did not have to pay was the equipment of the American Refrigerator Transit Company and the St. Louis Refrigerator Car Company, and we collected demurrage on that equipment under our tariff. We collected $1.00 a day after forty-eight (48) hours' detention by the shipper using this equipment, and we did not have to pay for this equipment. Supposing a carload of empty kegs was brought in and delivered to Anheuser-Busch Brewing Association and not unloaded by them for six days—we made out a bill against the Anheuser-Busch Brewing Association for demurrage and they paid us. The Anheuser-Busch Brewing Association paid no one else demurrage on that car. We are the delivering road, and in accordance with the demurrage rules it was proper to collect $1.00 a day from Anheuser-Busch Brewing Association.

It is a fact that on cars of that nature the delivering and receiving lines in the City of St. Louis have not collected demurrage from the Anheuser-Busch Brewing Association, but the Manufacturers Railway has.

473 Page 113 of our annual report to the Interstate Commerce Commission for the year ending June 30, 1911, shows that during that period our switching engines consumed 6,300 tons of bituminous coal, and that it cost us at the distributing point an average of $1.66½. This distributing point was usually in the yard between First street and Second street, Dorcas and Arsenal, at the roundhouse. In some cases this coal was consigned to the Manufacturers Railway and in other cases it might have been billed to the shipper, or it might have been billed to the South Side Coal Company—I don't know just how it was billed.

The section of the ordinance upon which I based my opinion that the ordinance prescribing a maximum rate of $2.00 per car for switching between the interchanges and sidings of the Manufacturers Railway Company in both directions does not apply to shipments where the railway company absorbs the allowance, is section 8, ordinance No. 22025, reading:

"Said Manufacturers Railway Company shall switch and transfer cars to or from any connecting line or switches, or to or from any line or switches with which said company may hereafter connect within the limits of the City of St. Louis, and its charge for such switching, including transportation to or from connecting lines and switches, and including the return of all empty cars which have been handled under load or which are to be loaded, shall not exceed $2.00 per car."

I said a reduction of $1.00 per car resulted when the Manufacturers Railway Company took over the operation of the Manufac-

turers Railway, and is explained in this way: A car of beer consigned to New York by way of the Big Four Railway, under tariffs effective when the Iron Mountain was operating the Manufac-
474 turers Railway, would carry a switching charge of $6.50 up to the St. Louis Transfer Railway, while the same movement under tariffs which were effective at the time of this cancellation would reach the St. Louis Transfer Railway with $5.50 charges on it. If the tariffs of the Iron Mountain Railroad showed that a delivery to Anheuser-Busch Brewing Association would be made from the Terminal Railway Association by it for $3.00, then my understanding, of course, is wrong and my answer would be in error.

Referring to our Exhibit No. 43, I would say that 160 cars of miscellaneous freight was strictly intrazily movement, and 5,000 cars on either a spent rate or delivered to us and received from us under tariffs that did not provide for the absorption of our switching charge—that is, there were 5,165 cars handled on the $2.00 rate in that year. In the column on Exhibit 43 headed A. B. B. A., I have included only the shipments to the Anheuser-Busch Brewing Association. I think that column will cover everything that the Anheuser-Busch Brewing Association ownership would control in any way.

The Purina Mills owns the output of the Brewers Dried Grain Company; they own the output, and that is the only business they ship from there. It is loaded at the dry grain house and they take the bills of lading because they do own the output by contract with the Brewers Dried Grain Company, and it applies to all of the Purina Mills, outbound business so far as I know. We treat the Dried Grain Company as owned by the Anheuser-Busch Brewing Association.

In making up Exhibit 46 for the ten months' period, I kept a record of the loading and unloading as per zones, but not as to individual tracks in the zones. It would involve endless detail to prepare a statement covering these middle zone shipments,
475 showing the use of the individual tracks by the Anheuser-Busch Brewing Association and by the independents. I have given the Commission at this hearing representative bills showing the use of these yards, but I would not undertake to analyze the specific handling of all of this business. Approximately, the Second street yard furnishes us the greater tonnage, Thirteenth street yards second in tonnage, Ninth and Eleventh street yards third in tonnage, and the Pestalozzi and Ninth street yards fourth in tonnage, and the postoffice yard fifth in tonnage.

If you will look on Exhibit 47 or 48, I there give you the percentage of Anheuser-Busch Brewing Association business handled in the middle zone. At the Second street yard the bulk of the business is Anheuser-Busch. The business in the "postoffice" yard is exclusively for other shippers in no wise connected with Anheuser-Busch. A small percentage of the business in the Second street yard is for independent shippers, and 100 per cent of the business in the "postoffice" yard is for independent shippers. All

of the business in the "postoffice" yard is miscellaneous business. Approximately, I would say that fifty per cent of the independent business of this middle zone is handled in the "postoffice" yard, about thirty per cent handled in the Ninth and Eleventh street yards, and possibly fifteen per cent in the Thirteenth street yards, and probably five per cent handled in the Second street yards.

The Family Jail Company, which handled 301 cars in the northern zone, is located at DeKalb street, south of Trudeau street. This plant has no railway switch from any railroad. It uses the tracks of the Manufacturers Railway, which are located about one block from this plant. I think the Iron Mountain has a team track at Barton street, which would be about equally distant from this plant.

In Exhibit 45, covering business of the northern zone, we included the business of the Cotton Belt. It includes everything that was handled in that zone under the Cotton Belt contract during the months of August, September, October, November and December—five months.

Regardless of the amount of the charge that the Manufacturers Railway Company might assess for services performed by the Manufacturers Railway Company for the Anheuser-Busch Brewing Association and for the independents, the charge to each would be the same under our proper tariff. If the charge was not covered by tariff and not one absorbed by the railroads, then we would charge $1.00 a car to either the Green Tree Brewing Company or the Anheuser-Busch Brewing Association.

On the 137 cars handled in the northern zone under the Cotton Belt contract we received $1.00 a car only. We handled each car for $1.00 under the contract, the Cotton Belt assuming the responsibility under the contracts. On the particular business covered by those contracts we are operating just as the contracts outline, not on lumber alone, but on traffic as outlined in the contracts. Under the contracts with the Cotton Belt they assume all liability up to the expense of soliciting the business, caring for it, paying the per diem or car service charge, and assume the responsibility of the contents of the car. We do the physical work only. Whereas for the railroads not operating under the contract we assume all that liability. So far as the movement is concerned we do exactly the same work for the Cotton Belt that we do for other lines. But on behalf of the other railroads we oftentimes solicit the business; we are responsible for the loading of the car while it is in our possession, we are responsible for the equipment, for the use of that equipment, as well as responsible for the transportation movement, while the contracts with the Cotton Belt relieve us of all responsibility save the movement of the car. We are not willing to extend that contract to every other railroad. However, we are willing to execute contracts with other tenants up to our full track capacity, and I will say we will execute such contract with the I. & N.

Most of the outbound shipments in the middle zone are handled in the refrigerator equipment of the St. Louis Refrigerator Car

Company or the American Refrigerator Transit Company. We operate both equipments on exactly the same basis. I think the larger proportion of the miscellaneous business is handled in equipment of the American Refrigerator Transit Company—that is, after eliminating the dressed beef shipments. The other breweries seem to have a fondness for the American Rrefrigerator Transit Company cars. The Manufacturers Railway Company handle without any preference the cars of the American Refrigerator Transit Company and of the St. Louis Refrigerator Car Company. We are almost always in a position when we are glad to use either one. Rarely ever do we have a surplus of cars on hand, and the conditions are such that we can afford to be fair, and we think we are fair. We always give the shipper the equipment that he wants when it is possible. If there is a surplus of St. Louis Refrigerator Car Company's cars on hand we do not endeavor to use that equipment in preference to the equipment of the American Refrigerator Transit Company. The Manufacturers Railway Company does not, through any of its employes or its traffic manager, seek to urge the
478 use of the St. Louis Refrigerator Car Company equipment.

Mr. Muehlberg, the traffic manager of the Manufacturers Railway Company, is secetary of the St. Louis Refrigerator Car Company's A. B. Series, but that does not carry with it the soliciting. The soliciting is done by their assistant manager, with offices on Dorcas street. He might go out and solicit business, but I do not think he does; but it is a matter upon whch I am not qualified to answer positively. Mr. Schwartz is the assistant manager, and he might solicit, in event their equipment was idle. Mr. Schwartz, the assistant manager of the St. Louis Refrigerator Car Company has no connection with the Anheuser-Busch Brewing Association, to my knowledge, nor with the Manufacturers Railway..

The agreement between the Anheuser-Busch people and the St. Louis Refrigerator Car Company provides that they will use the equipment when possible on lines that will allow them a fair return in mileage for that equipment. I do not know what the allowances are in the different territories and by the different railroads for the use of the refrigerator equipment of the St. Louis Refrigerator Car Company.

I do not know in feet how high the Thirteenth street yard is above Broadway. I do know that between Broadway and the Thirteenth street yard we have a grade of over four per cent. It is not a uniform grade, but the maximum grade between Broadway and Thirteenth street is a little over four per cent.

There may be signs reading "No Thoroughfare" in some of the enclosed yards, as, for example, our Ninth and Eleventh street yards, but I have never noticed them. However, my answer still holds good—they are available for railroad use at any time. There
479 is such a sign reading "No Thoroughfare" on the space occupied by the Manufacturers Railway tracks within the boundaries of the Anheuser-Busch Brewing Association.

Yes, I said something about the area of this middle zone being

owned by other interests—that the areas were very considerable. For instance, the Government owns five acres and I think Lyon Park is five or six acres; Lyon Park is city property. I think the Government gave that park to the city. It was a part of the old arsenal and was converted into a city park, but whether Mr. Busch had anything to do with it or not I do not know. There is other property frontage on all the streets occupied by residence- and stores which other people own. Taking the property bounded by Thirteenth street on the west, by Lynch to Ninth street, thence by Ninth street to Dorcas, thence by Dorcas to First on the north, by First street on the east and by Arsenal on the south, I would think that the Anheuser-Busch interests own seventy per cent of that property. Anheuser-Busch does not own the property between Thirtenth and Twelfth streets on the south side of Dorcas street—that is, they do not own all of it. I think they own only one piece of that property on the southwest corner of Lynch and Twelfth streets. The independent ownership extends as far south as the alley—I believe about 120 feet. The Anheuser-Busch people own all of the property between Tenth and Eleventh streets on the south side of Lynch street, and fifty feet on the southeast corner of Tenth and Lynch streets. The balance of the property is independent. The independent ownership between Thirteenth and Twelfth on the south side of Lynch street comprises the property from Lynch street to the alley, with the exception of thirty-five feet fronting on
480 Lynch street, with a depth to the alley of about 220 feet between Tenth and Ninth streets. The independent owners own all the property fronting on the north side of Lynch street extending to the alley, about 120 feet, with the exception of fifty front feet. About half the block between Ninth and Seventh streets north of Dorcas street is owned by Anheuser-Busch, about half is residences and business property, owned by other people. The block bounded by Seventh, Broadway, Dorcas and Pestalozzi is owned about half by Anheuser-Busch and half by private parties. The property from Dorcas street to Arsenal street, Broadway to First street, with the exception of the northwest corner of Arsenal and Second street, is owned by the Anheuser-Busch Brewing Association. I have to think this out as I go along—it is no easy job. From Arsenal street to Pestalozzi and Broadway to Seventh fifty per cent of the property is owned by independent owners—that is, the south half of the block. On the east line of Thirteenth street, between Arsenal and Pestalozzi streets, a strip of irregular depth, of probably about 40 to 120 feet, is owned by Anheuser-Busch and is used for dwelling houses and tenants of the Anheuser-Busch Brewing Association.

I have no record that would enable me to tell what part of the time of our locomotives is spent on the Second street line and what part is spent in the middle zone and what part spent in the river yard and on the viaduct.

The manufacturers Railway receives transportation for its official list. I get passes for myself, as president, Mr. Adolphus Busch, Mr. August A. Busch and Mr. Muehlberg. I cannot give you the roads iss-ing those passes and the part of the line of each road covered by

the transportation. I could not give you that unless I had
481 the pass record. I do not know as I have a complete record of complimentary passes that might have been sent. I have only a record of such passes as I requested.

I am not fully able to explain the excess of empty cars over loaded cars shown in our car statistics for the year ending June 30, 1910, and June 30, 1911, about which you questioned me yesterday. I prefer to give you that explanation after I have consulted with some of my operating men. I have an additional item that did not occur to me yesterday, but it will not fully explain—that is, we received a great many empty cars, which came back to us empty, that increased the empty movement. As to the exact analysis of that I prefer to consult with the men who took that in hand and settled that between themselves in the annual report for 1910. We move an empty and place it for loading, and receive the revenue on that load. We do not receive any revenue for the empty movement in such cases.

There is a small insurance reserve that has been raised that is charged to operating expense—that is in addition to other reserve for depreciation of way and structures, depreciation of equipment, and on account of this litigation. This small insurance reserve, as shown on trial balance of November, 1911, is $1,121.67. This insurance charge was distributed through the several operating expense accounts under the different general headings. My remembrance is that it should be divided between the maintenance of ways and structures, maintenance of equipment, and transportation expenses.

The Manufacturers Railway purchased its fuel principally from the Western Anthracite Coal and Coke Company, operating the O'Fallon coal mines, located eight miles east of East
482 St. Louis, and served by the St. Louis and O'Fallon Railway. They have no office or yard on our line. I do not think the Western Anthracite Coal and Coke Company ship anything to the Manufacturers Railway that is not ultimately used by the Manufacturers Railway. It is probably true that there is some coal consigned to other persons on the Manufacturers Railway which is ultimately used by the Manufacturers Railway. This coal was brought into East St. Louis and O'Fallon Railway, there delivered to the Terminal and by the Terminal to the Manufacturers Railway at our interchange at Lesperance street. Whether it was consigned to the Manufacturers Railway as a consignee or to other concerns or to fictitious concerns for the use of the Manufacturers Railway I am not now just clear. I know for a time I tried to keep the source of my coal supply out of the open market. I had some reason at the time which I do not remember. There was some entanglement for some purpose or other in the shipment of fuel to the Manufacturers Railway, but I will gladly give you a list of the cars used, how they were consigned, from whom they were purchased, just as soon as that information can be collected from the details in my office.

It is true that the trunk lines have furnished transportation to the

families of the officials of the Manufacturers Railways, as well as to the officials themselves.

Redirect examination:

The part of rule 9 of our new tariff No. 8 (a copy of which was introduced into this record as an exhibit) which refers to the average car service rule reads as follows:

"When a shipper or receiver enters into the following
483 agreement, a charge for detention to cars provided for by rule 7 on all cars held for loading or unloading by such shipper or receiver shall be computed on the basis of the average time of detention to all such cars during each calendar month, such average detention to be computed as follows."

This average agreement is extended by St. Louis lines to all shippers and receivers of freight. Prior to the general adoption of the car service rule set forth in that tariff the Manufacturers Railway was allowed 72 hours free time by the St. Louis lines—that is, a specific arrangement was put into effect and it was discussed at Washington at the time this plan was formulated and explained why it was done. It was done to give the Manufacturers Railway at least 24 hours for the placement and delivering of the car back to the connection. These rules were adopted, I believe, in May and provided no relief for any line similar to the Manufacturers Railway. Anticipating their adoption I filed my application to be permitted to operate under the per diem rules through William F. Allen, Secretary, so as to place our property on the same basis as other common carriers in St. Louis. That application was pending and finally denied. A new application was immediately filed after the partial decision of this case by the Commission. This application was made to admit the Manufacturers Railway, both as an associate member of the American Railway Association and also as a participant in the per diem rules agreement. The applications are still pending so far as I know.

As I understand it, the way it is set forth in the per diem rules agreement is, if a common carrier is not operating under those rules, and is not a member of the American Railway Association or an associate member, the road that is a member of the American
484 Railway Association or an associate member, or operating under the per diem rules agreement, will take the responsibility for delivery of equipment operated under the per diem rules agreement from such a line which is its direct connection and is not operating under similar circumstances; the line so cared for will pay this per diem to the line that is its sponsor.

Last August we so arranged with the St. Louis, Iron Mountain and Southern, and these conditions have been agreed to by all trunk lines operating with us through the St. Louis Transfer Railway, with the exception of three or four of the trunk lines.

The value of the yards in the middle zone lies in the fact that we have all of those yards to offer the general public for common carrier purposes. It does not rest in any particular part of those yards that

may happen to be used to a greater extent than some other part of the yard. It has been the case frequently that the same consignee would be unloading freight in two or more yards simultaneously. The value of these yards to the Manufacturers Railway for common carrier purposes is to show the public and to acquaint them with the fact that we have all of the facilities there, and that they can use any part of them in their business at any time. It brings us business which we are oftentimes privileged to place where it will be most convenient to the railroad for handling, and at the same time satisfy the user of the track. It has been the practice of the Manufacturers Railway Company to set cars in the middle zone in whatever yard the shipper desired, irrespective of the extent to which that particular yard might or might not be used for service to the Anheuser-Busch Brewing Association.

N. K. Fairbanks Company was the large shipper that
485 threatened to take away their business unless the average car service agreement could be afforded it by the Manufacturers Railway Company. The business of N. K. Fairbanks Company is competitive business. The Iron Mountain serves them to a greater extent than the Manufacturers Railway.

The John Nooter Boiler Works, which is situated between Miller street and Park avenue, was never served by the Iron Mountain. This is an industry that has located since the tracks of the Manufacturers Railway were built. This plant did not exist at the time the Iron Mountain had a spur on that property.

I was asked whether there is a "For Sale" sign on a certain piece of property along the North Second street line, at North Trudeau street, with a reference on it to the Manufacturers Railway Company for information. Now, as executive of the Manufacturers Railway I have purchased a considerable amount of property for the purpose of developing this railway. At present private ownership exists so far as this property is concerned, but the owners have authorized me to use my best judgment in selling it to anyone who would locate on our tracks and furnish carload business, and for that reason the sign refers to the Manufacturers Railway. And, assuming that Adolphus Busch is the owner of all that real estate, it is a fact that he permits me to have inquiries for the use of the real estate referred to me in the hope that I may get a new shipper located there on our North Second street line to furnish business for the Manufacturers Railway.

"Examiner Mackley: I think the evidence shows pretty well, Mr. Moore, the condition of traffic—that is, what is handled for the Anheuser-Busch Company and what for independent; that is in the record, is it not?

486 Mr. Moore: Yes, sir; and as clearly as I can give it.

Examiner Mackley: That is by cars—I do not know about the tonnage.

Mr. Moore: By carloads.

Examiner Mackley: But that would be representative of the amount, whether expressed by cars or tons, would it not?

Mr. Moore: The old record deals largely with tonnage, and the reason for that is that I consider it a fairer unit of measure, but the

record subsequently introduced at this hearing deals with carloads and percentages if percentages have anything to do with the case, will be against the Manufacturers Railway on a carload basis as compared with percentages on a tonnage basis.

Examiner Mackley: You mean the independent loads will be heavier?

Mr. Moore: Yes, sir. Beer moves under a less minimum weight than many of the other commodities, and much of our traffic, as you can see from the list of our customers, is beer."

Our annual report to the Commission shows only such values as are financed and taken into our accounts, and that only of the intrinsic value, costs, and nothing of the intangible value. The annual report does not show the value of certain property which I have described, used at present by the Manufacturers Railway, for which no remuneration is paid to anyone at this time. The equipment is shown accurately and the other figures are accurate, with the exception that some of the property used is not included in the capital account as yet. Neither do we pay for it under lease. I mean to say that I have nothing in the railroad accounts reflecting the personal investment of Adolphus Busch in property along the line and
487 for purposes of future extension. But in our annual report we have the amount expended in roadbed and tracks, right-of-way and buildings and equipment, and represents amounts actually expended or the real value of all that the railroad, as such, has in their property at this time.

"Examiner Mackley: Now, what other intangible considerations had you in mind—just what you do mean by that?

Mr. Moore: Intangible values rest with franchises which probably would be hard to duplicate, and, as explained to me by the Board of Equalization in the charter rights, the tax returns made by me and the tax assessments made by the Board of Equalization, show plainly what they regard the intangible value of the Manufacturers Railway to be.

Examiner Mackley: And does that include a future value—any enhancement in value; have you that in mind?

Mr. Moore: I presume that includes the going concern value.

Examiner Mackley: Is there any way you could tell what part of this road equipment and facilities are used in hauling traffic of independent shippers to and from your connections?

Mr. Moore: I would think that if you would take that Exhibit No. 1, subdivide interchange loads as between the Anheuser-Busch Brewing Association and independent shippers, which can be done by reference to Exhibit 44, add Anheuser-Busch 7,104 for interwork movement and probably 1,500 more for Anheuser-Busch's proportion of intracity movements and *weigh* movements, that you could get a percentage basis for the use of the property proportioned out as between Anheuser-Busch and other interests.

488 Examiner Mackley: Would that show the proportion that was used on traffic to and from connections as distinguished from interwork traffic? Is there any way to arrive at that?

Mr. Moore: By separating the 52,281 interchange loads as between

the outside business and the Anheuser-Busch Brewing Association business, you ought to be able to arrive at the percentage of power and property required for the handling of Anheuser-Busch business on that kind of a basis, which would be useful.

Examiner Mackley: The expense of operating that particular traffic—how would you arrive at that?

Mr. Moore: I would say the same plan is the only method I have been able to devise, and would be equally applicable to all subdivisions shown on that Exhibit No. 1.

Examiner Mackley: You have not gone into that to any great extent because you assumed that the railway should be considered as a whole—that is, all traffic?

Mr. Moore: That is the way I have to consider it. For my own information I have made some computations, just like an operating man would, for my own guidance and information, but they are not matters of record."

So far as my information goes, I have tried in these statements to furnish facts from which proportionate estimates and conclusions of that kind can be drawn.

Now, with reference to per diem reclaim and my statement that about 4½ days was our average time of detention. This is not a guess; it is based on an actual check of two months' business in so far as it relates to the cars operated under the per diem agreement by the Manufacturers Railway. I wish, in a spirit of fairness to other terminal lines, to always state that my basis of detention
489 may not be the same as the detention on other terminal lines in St. Louis, as conditions are different. This average time is arrived at by actual computation for the months of November and October, 1911. I think that in November and October we handled possibly a larger percentage of per diem equipment than we would have handled in other months, for the reason that coal moves altogether in per diem equipment. Regardless of cars and equipment, the length of detention varies with the volume of business. Our business is heaviest in July, August and September, but we have so increased and improved our facilities that I hope to handle the heavy business as expeditiously as the light business.

"Examiner Mackley: Suppose you get up a statement for July and August, and then you have October and November, and then you go back about to January or February and March, and file a statement of that sort.

Mr. Moore: That involves quite a little work and will take some time. I shall send it to you.

Examiner Mackley: Send it as soon as you can get it up.

Mr. Moore: At the next hearing?

Examiner Mackley: If you can get it in before we would prefer to have it before the next hearing. It seems to me the Commission would like to be advised along those lines, not only as to the Manufacturers Railway, but as to some other lines, as it may be that they will want to go into it with other lines—I do not know."

We have treated the shipments handled strictly according to the billing to us and the billing from us. We do not stop to analyze

and ask a man whether his shipment is for Anheuser-Busch,
490 William J. Lemp, or John Jones, contractor, but if it is billed to the brewery, it goes to the brewery account in our classification; if it is billed to John Jones, Contractor, it will go into miscellaneous business.

M. H. SMITH, a witness called on behalf of defendants, testified: I am president of the Louisville & Nashville Railroad Company. I have been the chief executive officer with the title of president or vice-president since 1882. I was local agent of the Louisville and Nashville from 1865 to 1869, general freight agent of the Louisville and Nashville Railroad from 1869 to 1878, general freight agent of the B. & O. Railroad from 1878 to 1881, when I returned to the service of the Louisville and Nashville as its chief executive officer in 1882, and have had more or less supervision of traffic affairs ever since.

As to the production of malt liquors in the United States, I have only general information. From a statement of production of malt liquors in the United States in barrels of 31 gallons, for the year ending June 30, 1911, the total production was 63,283,123 barrels, an increase of 3,892,200 barrels over the previous year. I have procured the names of the brewing companies located in the various cities referred to, and information relative to their location, approximately their output per annum, and the approximate estimate of the proportion of the output that is consumed locally and the proportion that is shipped to other points. There are twenty-six breweries in operation in Cincinnati, Ohio; Covington, Kentucky, and Newport, Kentucky, of whch only one is located on tracks of a steam railroad. The total production of the twenty-six breweries is approximately 2,239,000 barrels per annum, of which approximately 35 cent is
shipped to other points, the remaining 65 per at being
491 consumed locally. The total output of the Herancourt Brewery, which is located on the tracks of the C. H. & D. Ry., is consumed locally. All of the more than 800,000 barrels shipped to other points is subject to the expense of drayage between the plants and the tracks of the steam railroads.

At Louisville, Ky., and New Albany, Ind., there are thirteen breweries in operation and three brewing plants that are now not operated. The total annual output is approximately 462,000 barrels, of which 25 per cent is shipped to other points. Only two of the breweries are located on tracks of steam railroads. There are twenty-two breweries in operation at St. Louis and East St. Louis; approximate output 4,694,500 barrels, of which approximately 57 per cent is shipped to other points. Nine of the breweries are located on tracks of steam railroads. Of the total output the Anheuser-Busch Brewing Association produces 2,500,000 barrels, or 53 per cent. Of the total of 2,674,860 barrels shipped to other points, 1,875,000 barrels, or 70 per cent, are shipped by the Anheuser-Busch Brewing Company.

I think, with few exceptions, all of the existing brewery plants were originally located at points without track connections, and I

think the reason therefor is that they were first created to supply the local demand for their product; that shipment to other points was not at the time given much, if any, consideration, and the further fact that the incoming freight, or the material from which the liquors are manufactured, forms a small part of the tonnage of the output. I believe it is a fact that the original Anheuser-Busch brewing plant was located without rail connections and was operated without such rail connection until that company built tracks
492 connecting its plant with the St. Louis, Iron Mountain and Southern Railway.

I assume that before the construction of the Manufacturers Railway Company the Anheuser-Busch Brewing Association necessarily moved its product between the plant and the various shipping points by street vehicles. I must assume that the management of that plant, when they created the Manufacturers Railway Company, believed that it would be more economical to so handle their product or they would not have made the investment.

During the month of October, 1911, the following cars of beer were shipped by the Anheuser-Busch Company via the Louisville and Nashville to Memphis, Tenn.:

Car. Initial. No.	Contents Beer.	Weight.	Rate.	Revenue.	Switching.	Total
M. 356, 240c		25,250	16	35.90	4.50	40.40
St. L. R. 2792, 250c/		25,000	16	35.90	4.50	40.00
W. L. R. C. C. 2972, 240c/		24,000	16	33.90	4.50	38.40
W. L. R. C. C. 2785, 240c/		24,000	16	33.90	4.50	38.40
W. A. D. 429, 240c/		24,500	16	34.70	4.50	39.20
St. L. R. R. 2788, 150½ bbls		24,500	16	34.70	4.50	39.20
M. H. D. 718, 240c		24,000	16	33.90	4.50	38.40
St. L. R. R. 2058, 50 bbls. Bot. 130c.		25,000	16	35.50	4.50	40.00
St. L. R. R. 2786, 240c		24,000	16	33.90	4.50	38.40
St. L. R. R. 2922, 250c		34,500	16	34.70	4.50	39.20

Total number of cars shipped, 10; total weight, 244,750 pounds; average weight per car, 24,475 pounds; through rate, 16 cents per hundred; total revenue, $391.60, of which $4.50 per car, or
493 $45.00, was rebated to the Anheuser-Busch Brewing Company through the Manufacturers Railway Company for alleged services in delivering the loaded cars to the tracks of the Wiggins Ferry Company. It will be seen, therefore, that the rebate amounted to about 11.5 per cent of the total revenue for which the brewing company moved the cars over its main line, a distance of something less than 4,000 feet, while the Louisville and Nashville Railroad Company assumed the cost of moving the traffic between the point of interchange with the Wiggins Ferry and Memphis, 477 miles, including the crossing of the Mississippi River at St. Louis, the Ohio River at Evansville, the Cumberland River at Clarksville, Tenn., the Tennessee River at Danville, Tenn., and also furnished the terminal facilities at Memphis. The property was moved in refrigerator cars, for which the Louisville and Nashville Railroad Company paid the owners three-fourths of a cent per mile going and

returning, or $7.16. At least five of the cars belonged to the St. Louis Refrigerator Car Company, which is largely owned by the same interests that own the brewing company and the Manufacturers Railway. The minimum carload weight of beer is 24,000 pounds, based on estimated weights of packages. The statement of shipments under consideration show that they loaded slightly more than the minimum. The average weight of modern refrigerator cars varies from 43,000 pounds to 47,500 pounds; weight capacity 60,000 pounds, or 30 tons; adding 10 per cent as the usual load limit gives the maximum load 66,000 pounds; from which it would seem that the average load of the ten cars shipped was but 24,475 pounds. In addition the shippers are allowed to load as much ice as may be necessary. The quantity of ice loaded seems to vary from 2,000 pounds to 5,000 pounds, according to distance and season or
494 temperature. Assuming the average weight of car to be 44,000 pounds, and assuming that 2,000 pounds of ice is loaded, and that 24,000 pounds of beer is loaded, makes the total weight 70,000 pounds, for which the railroad receive pay for transporting 24,000 pounds. The weight upon which revenue is received is but 35 per cent of the gross weight, or the dead weight transported is 65 per cent of the total weight.

Had these shipments moved via the Illinois Central, which is the shorter line between St. Louis and Memphis, the gross revenue derived would have been the same; the amount allowed the Manufacturers Railway would have been the same, and the same percentage of gross revenue. As the mileage allowance for refrigerator cars is based on the miles run, the revenue derived by the Refrigerator Car Company would have been less, for the reason that while the Illinois Central pays one cent per mile run the distance is but 322 miles and the Refrigerator Car Company would, therefore, have received but $6.44 for the use of the car for the round trip.

Had the shipments made by the Anheuser-Busch Company via the Louisville and Nashville Railroad Company to Memphis, during the month of October, been made by the Lafayette Brewery, located at Cass avenue and Eighteenth street, or by any brewery which by its location must incur the expense of moving traffic between its plant and the point of delivery to and receipt from the steam carriers, the carriers would have received from such point of interchange full tariff rates—i. e., would not have been subjected to the $45.00 or $4.50 per car paid to the Manufacturers Railway. Per contra, the brewing company would have, in addition to paying the full rate, incurred the expense of moving the property be-
495 tween its plant and the station or receiving track of the Louisville and Nashville Railroad on Collins street, between Cass avenue and Dickson street. Assuming the cost of drayage to be 4 cents per hundred, or 80 cents per ton, and the total number of tons 122, they would, in addition to paying the full rate, have paid $97.60; and if 2,000 pounds of ice per car *was* shipped, it would have been 80 cents or more, or $8.00—total $105.00; to which add $4.50 per car, or $45.00, allowed the Manufacturers Railway—makes a total of $150.60 expense incurred by the independent brewer

in excess of that incurred by the Anheuser-Busch Company. In addition, the independent brewer gets no benefit from the arrangement or reclaim under the per diem rules agreement, no profit from ownership of refrigerator cars, and does not receive free transportation for himself and family, nor is he furnished free transportation for a car and party. An unjust discrimination amounting approximately to $1.23 per ton or more. Had the empty packages in which the ten carloads of beer were shipped by the Anheuser-Busch Company to Memphis via the Louisville and Nashville Railroad Company, during the month of October, 1911, been returned via the Louisville and Nashville Railroad Company to the Anheuser-Busch Brewing Company's plant, the Louisville and Nashville Railroad Company would have received for the transportation, according to tariff, on a minimum carload weight of 10,000 pounds, the tariff rate of 8 cents per hundred per car. Out of this the Louisville and Nashville would have to assume the cost of moving the car from the end of its tracks in East St. Louis to the Wiggins Ferry tracks at point of interchange with the Manufacturers Railway and allow the Manufacturers Railway $4.50 per car, leaving for the transportation from Memphis via Guthrie and Evansville, 477 miles,
496 to the interchange with the Manufacturers Railway $3.50 per car. In addition, if these empties were moved in a refrigerator car belonging to the St. Louis Refrigerator Car Company, it would have had to pay three-fourths of a cent per mile for 477 miles, or $3.58; in other words, it would have paid to the Manufacturers Railway and the St. Louis Refrigerator Car Company 8 cents more than it received for transporting the property from Memphis, via Guthrie and Evansville, to the point of interchange with the Manufacturers Railway.

In the case of the independent brewer, had the empty packages been returned by the Louisville and Nashville Railroad it would have received $8.00 for a minimum weight of 10,000 pounds for transporting the car from Memphis to its tracks in the vicinity of its station on Collins street, but would not have been subjected to the charge of $4.50 per car allowed the Manufacturers Railway.

The charge made by the various railroads for switching for each other in St. Louis and East St. Louis is fixed upon a reciprocal basis. The railways switch for each other, and if it is approximately reciprocal—that is, if what one does for the other is approximately reciprocated by return switching, it makes very little difference what the charge is, whether it is $1.00 per car or $5.00 per car. Where reciprocity is not equal, the railroads refuse to switch for each other, and as the Manufacturers Railway Company cannot reciprocate, cannot furnish transportation facilities for which the various steam roads may compete, the charge for interchange or reciprocal switching between the various railroads competing for traffic to and from the City of St. Louis and East St. Louis has no bearing whatever upon the charge to be made by the Manufacturers Railway
497 for non-reciprocal switching, for which, as heretofore testified, no allowance should be made.

The cost of moving traffic between the various industries reached

by the tracks of the Manufacturers Railway and point of interchange with the steam railroads should be borne by the owners of the property and should not be made the basis of making unjustly discriminating rates by the steam carriers.

The Terminal Railroad Association and its affiliated lines about St. Louis are owned by the various steam railways having termini in St. Louis and East St. Louis. Each of the proprietary lines, therefore, treats these Terminal Association lines as part of its system, and the Association renders services for each of the proprietary lines upon the same terms and conditions. The division of the revenues accruing to the Association and its proprietary lines upon traffic moved is a matter of interest only to the parties directly interested, and is no criterion for a basis of a division of revenue between switching lines, or plant facility tracks like the Manufacturers Railway, and the steam roads. Each of the proprietary lines has entered a legal and enforceable contract which cannot be abrogated, except possibly through bankruptcy proceedings, whereby the proprietary lines are under obligations to pay any deficit that may result from the operations of the Terminal Railroad Association should the revenue derived for services rendered be insufficient to pay the interest upon the outstanding obligations assumed, including taxes, cost of maintenance and operation. It has therefore been the policy to endeavor to make the allowance large enough to avoid a deficit or loss, which up to this time has been done. No dividends have ever been paid on the stock, and it is not anticipated that any will be paid. Any
498 surplus that has in the past been earned has been invested in providing increased facilities. The facilities of the Terminal Railway Association are open to the use of all railway lines connecting therewith. The owners of local coal roads, like the St. Louis and O'Fallon, and suburban and electric lines, who may build a few miles of road to connect with the tracks of the Terminal Association, are permitted to use its facilities upon the same terms as the proprietary lines. This has tended and will continue to tend to encourage the building of competing lines in the territory surrounding St. Louis and East St. Louis.

"Mr. Stone: From your observation, is the business of manufacturing and selling malt liquors in the United States upon a profitable basis? Does the wide distribution of malt liquors by brewing companies, in competition with each other, indicate any necessity for making concessions in the existing rates of transportation?"

The large increase in the production and sale of malt liquors during the fiscal year ending June, 1911, over that produced and sold during the previous fiscal year, as shown by the collections of internal revenue tax, is proof that the business of manufacturing and selling such liquors is in a prosperous condition. The very low rates made for the transportation of such liquors seems to have obliterated distance, and breweries in different localities seem to successfully compete with local breweries in other cities. It is known that the Anheuser-Busch Company successfully competes with the local breweries in Louisville, Cincinnati, New York and elsewhere throughout the country. In addition to the advantages secured by the Anheuser-

Busch Brewing Company from illegal concessions made by the railways, that company has an additional advantage over its competitors, in that, owing to its enterprise or other reasons, it disposes of
499 its large product at prices in excess of those received by its smaller competitors; and it follows that the illegal concessions made by the railways to this large brewing company are not necessary to its success. According to current reports, the profits of the Anheuser-Busch Company are very large; in fact, it has been stated that the profits of their entire business, all sources, were, for a recent year, $6,200,000.

Instead of the steam carriers making concessions to that company, they should receive a reasonable compensation for the very exacting service rendered.

In my opinion, the ground or cause which led to the placing of this allowance of $4.50 to the Manufacturers Railway by connecting lines in the tariffs of the several defendant railroad companies is incompetent management of railways—the same cause that for many years disgraced the managements of the railways of the country in the conduct of their traffic, resulting in unjust discriminations between large and small shippers. Unregulated and ruinous competition, resulting in the bankruptcy of many of the railroads of the country, in dissatisfaction of the people of the country, which eventuated in legislation whereby the United States Government, through the Interstate Commerce Commission and the courts, has assumed responsibiliy, prohibiting unjust discrimination and requiring the maintenance of established rates. The disgraceful concessions that have been made by the various railways to the Manufacturers Railway, since the decision of the Interstate Commerce Commission that it was a common carrier, are conclusive evidence that were it not for the restraining power of the United States Government chaotic conditions would again be created by the inability of the railway
500 managements to adopt and maintain reasonable and just tariffs, intended to put all shippers or patrons of the railways upon the same basis.

The concessions made to the Manufacturers Railway are disgraceful. It shows that by the skillful playing of one road against the other the big shipper has succeeded in enmeshing all.

It has been accomplished, mainly, through the weakness of the railway managements, by the use of the boycott. An officer of the St. Louis Southwestern Railway recently admitted to me that that company was the first to make the concession, or, as he expressed it, that company was "the goat." When asked what compensation or reward that company received, he said they were receiving about twenty carloads per day of shipments from the Anheuser-Busch Brewing Company. There is no evidence that anyone connected with that company, or with the other companies, has analyzed the results or knows whether the traffic they have moved yields a remunerative revenue.

The service is most exacting. It is moved in expensive refrigerators. The property shipped is perishable, and is therefore given preference, thus insuring a profitable return to the owners of the re-

frigerator cars. The percentage of paying weight to the gross weight of the car and the contents is very small—in fact, the paying weight is but little, if any, more than one-third of the load limit of the car.

Most of the cars are returned empty, and the net result, in at least many cases, is nil; in other words, the shipments, like the ten cars moved by the Louisville and Nashville between the Anheuser-Busch plant and Memphis, during the month of October, 1911, are moved at a loss—a condition of affairs that can only be remedied by or through the agencies created by the United States Govern-
501 ment, which are intended to prohibit unjust discriminations and at the same time secure to the railway carriers a reasonable return for services rendered.

Cross-examination by Mr. Schnurmacher:

"Mr. Schnurmacher: I observe that your answers have been read from a typewritten statement in your hands. Who prepared that?

Mr. Smith: I did.

Mr. Schnurmacher: Were you assisted by anyone in the preparation of the paper?

Mr. Smith: I was not; in fact, if I may be allowed to say, so, I have got something in here that the attorneys won't allow me to produce; they don't approve of what——

Mr. Schnurmacher: I imagine that——

Mr. Smith: They do not approve of what I have done.

Mr. Schnurmacher: Mr. Smith, what——

Mr. Smith: I have necessarily to assume the entire responsibility of it, and do so.

Mr. Schnurmacher: When you say that there are matters in the statement from which you have read that the attorneys will not permit you to read——

Mr. Smith: They have not permitted me to read it. They cut it out.

Mr. Schnurmacher: What attorneys do you refer to?

Mr. Smith: To my attorney—Colonel Stone.

Mr. Schnurmacher: You mean counsel of the Louisville and Nashville Railroad?

Mr. Smith: Of the Louisville and Nashville Railroad. He has omitted one that I think ought to go in.

Mr. Schnurmacher: When did he see the statement?

Mr. Smith: He can tell you—I cannot. Last night, wasn't it, or this morning?

Mr. Stone: Yes.

502 Mr. Schnurmacher: And he advised you to omit certain parts of the statement.

Mr. Smith: No, he did not advise me. He did omit it; he did not ask the question. I will tell you which one it is if you like.

Mr. Schnurmacher: Never mind.

Mr. Stone: You do not want it in either, do you?

Mr. Schnurmacher: I am not objecting.

Mr. Smith: He cut out interrogatory No. 12.

Mr. Schnurmacher: What is that interrogatory?

Mr. Stone: If you get the question you will need the answer to make it complete.

Mr. Smith: I will circumvent my counsel and get it all in. Interrogatory No. 12 reads as follows: "Does the fact that the Interstate Commerce Commission decided that the Manufacturers Railway was a common carrier justify the concessions that have been made by the steam carriers to the Manufacturers Railway, including the charge of $4.50 per carload on freight forwarded and received; the participation in the per diem rules agreement; the payment of excessive rental for use of refrigerator cars owned by the same interests that own the brewing company and the Manufacturers Railway; and the issues of passes to the officers of the Manufacturers Railway and their families?" That is the interrogatory which he cut out.

Mr. Schnurmacher: Who prepared the interrogatory, counsel?

Mr. Smith: I did.

Mr. Schnurmacher: You prepared the questions yourself?

Mr. Smith: Yes, sir; I did.

Mr. Schnurmacher: To be put to you?

Mr. Smith: What?

503 Mr. Schnurmacher: You prepared the questions to be propounded to you?

Mr. Smith: And the answers.

Examiner Mackley: What is your answer to that question?

Mr. Smith: Do you object?

Mr. Stone: No; read it.

Mr. Schnurmacher: I think we may anticipate the answer. You do not still object?

Mr. Stone: I have already assented.

Mr. Smith: The Interstate Commerce Commission decided that the Manufacturers Railway was a common carrier, subject to the Act to Regulate Commerce. All corporations or persons that transport property for hire are common carriers. The Interstate Commerce Commission has, however, distinguished the Manufacturers Railway from other similar common carriers, as being subject to the Act to Regulate Commerce. This decision did not justify the railways in making the concessions that have been made. It does not follow that the Commission will, after due consideration, decide that the Manufacturers Railway is entitled to any concession or to participate in the through rate.

Mr. Schnurmacher: You have just ventured the opinion that, despite the judgment of the Interstate Commerce Commission as expressed in this case last June, it is illegal for the railway companies to make any concessions whatever to the Manufacturers Railway, have you not?

Mr. Smith: That is my opinion; yes.

Mr. Schnurmacher: What working arrangement—what traffic arrangement is there at this time between the Louisville and Nashville Company and the Manufacturers Railway Company in force?

Mr. Smith: I am not accurately informed, but I believe

504 that with the exception of one or two matters like the per diem rule agreement, which Mr. Moore testified to yesterday,

that the Louisville and Nashville Railroad is in the same category as the other railways, and is therefore subject to the same criticisms I made on incompetent management of the railways.

Mr. Schnurmacher: It is equally criminal, then, in your opinion, with all the other railways?

Mr. Smith: Certainly.

Mr. Schnurmacher: Well, your real activity, your active defense in this case is made because of your fear that the principles decided in this case may affect you in connection with other similar, or possibly similar claims; is that right?

Mr. Smith: That is true, and not only a fear, but it will very injuriously affect us if it is cited as a precedent, as it already has been. The matter of the Anheuser-Busch Company did not particularly concern me as representing the Louisville and Nashville Railroad, because I was satisfied that if we lost the entire business of the Anheuser-Busch Company we would make money. We do not receive a remunerative rate for the transportation of beer to and from St. Louis under the existing conditions."

In all of my testimony I assumed that the Manufacturers Railway is a switching line, serving certain industries. It is immaterial whether you decide it is or is not a common carrier. The fact that it has been decided a common carrier does not justify, in my opinion, that the traffic moved between industries on that line to a point of interchange with steam railroads—that the steam railroads must make a reduction and make lower rates from that point than they do other and similar industries, and my objection to any absorption of the charges of the Manufacturers Railway Company, in
505 whatever amount, is not only unlawful, but it is a reduction of the revenue of the railroads. I am not so much concerned about the question of legality, but I am concerned in what is to protect the revenues of the Louisville and Nashville Railway Company; I object to paying to the Manufacturers Railway or the Anheuser-Busch Brewing Association, through the Manufacturers Railway, 11½ per cent of the revenue derived for transportation of beer between their brewery and Memphis, and we are doing that very thing now; I don't know for how long we have been doing so; my best impression is that we have been absorbing the $4.50 a car since July or August, 1911.

My attention was directed to the matter of the absorption of the Manufacturers Railway Company charges by the case of the Birmingham and Southern Railway, about the first part of September or October last.

I am not familiar with the amount the Louisville and Nashville Railroad allowed by way of division of through rates to the Terminal Railway Association of St. Louis for switching a carload of beer, but the L. & N. Railroad is one of the proprietors of the St. Louis Terminal Association and we treat that as a part of our system. We bear the burden as being upon us and other carriers, something that we cannot avoid, or furnishing terminal facilities in the large and congested City of St. Louis and East St. Louis, and it is a part of our expense. It would be impossible for the L. & N. to provide these

facilities on its own account, and therefore it amounts to this: that the various steam railways have come together and by mutual agreement have undertaken to provide these facilities for all, which necessarily is an economic arrangement and of very great benefit to the City of St. Louis; no other large city in this country has any
506 such advantages. You could not get the terminal facilities provided by the Terminal Association for the L. & N. Railroad and other roads in the City of Chicago at any price; it would be the same thing in all the large cities and even in some of the smaller ones.

I do not base my opinion that the amount allowed the Manufacturers Railway is excessive, or the opinion that I have expressed that no allowance should be made on any allowance that is made by the various proprietary lines, or the service rendered by the Terminal Railway Association. They are entirely different and distinct. The Terminal Railway Association is a part of the system of the L. & N. Railroad, and is the means by which we furnish facilities for the transaction of business with the people of St. Louis. The Manufacturers Railway is a mere subterfuge—a switching line created by the Anheuser-Busch Brewing Association for its own convenience, because the management evidently believed it could move its property between its plant and the point of interchange with the railroads by means of this railroad and its locomotives cheaper than they could move it by vehicles. If they can, they are entitled to the benefit of their investment; if they cannot, they should abandon it. If it is cheaper to move their product by means of street vehicles, then they should abandon the railroad. The Terminal Railway Association of St. Louis is a separate corporate entity, and the L. & N. Railroad is one of the stockholders.

"Mr. Schnurmacher: Suppose the Manufacturers Railway were merged into the ownership of the Terminal Railway Association by the fourteen (14) proprietary lines, would that same piece of railroad that you now criticise in the way you have become a matter of great public advantage to the shippers and industries in
507 St. Louis merely by reason of the change of title?

Mr. Smith: If the Manufacturers Railway was acquired, owned and operated by the Terminal Railway Association, it would become a part of the terminal facilities—I should say of the proprietary lines."

I am still of the opinion that the decision of the Interstate Commerce Commission, so far as made, is wrong, but I may be reversed. There is this possibility: that the Interstate Commerce Commission, if they adhere to their decisions and do decide that the carriers must reduce their rates upon traffic moved to and from points on the Manufacturers Railway, it may be reversed by the Supreme Court of the United States.

If our legal department could overcome the difficulties concerning ownership, as was apparently done by the legal department of the Iron Mountain Railroad, the question as to whether the Manufacturers Railway, as a terminal and switching line, would become a general advantage to the industries and shippers of St. Louis by

reason of a change of title if acquired by the Terminal Railway Association, would depend, I should think, upon what advantages those industries now have and upon the terms upon which their traffic would be moved should the ownership be changed. Those are conditions that are not now known. Whether they would be advantages to the people of St. Louis or disadvantages I do not know.

I contend that it is illegal to transport property from points of intersection with the Manufacturers Railway for less than the tariff rate, and that the discrimination is shown in a graphic way by the fact that the industry or similar location, not located on the Manufacturers Railway and that has to incur the expense of moving its traffic between its plant and the point of receipt and delivery
508 of the steam railways, should certainly not be charged more from such point of delivery or receipt than the Anheuser-Busch or other industry on the Manufacturers Railway pays to and from the intersection of the Manufacturers Railway with the Wiggins Ferry Company or the St. Louis, Iron Mountain and Southern. But I have not proposed that an industry located where it has to use street vehicles to move its traffic to and from the stations should receive a less rate than tariff rates, but I do contend that no other company should receive a less rate to and from the point of receipt and delivery than he does. If you allow an industry located on the Manufacturers Railway $4.50 per car to cover the cost of moving the traffic over the Manufacturers Railway between its plant and point of interchange, you should allow, in justice to this industry that has to dray, the $4.50 per car to put it on the same equal footing.

"Examiner Mackley: Suppose the L. & N. Railroad Company's rails extended over the same territory that the Manufacturers Railway does, would there not be the same discrimination against shippers that are not located right on its line? What would be the distinction there?

Mr. Smith: If the L. & N. Railroad Company's tracks extended to the industry, say the Car and Foundry Company, it would become a part of its system and under the existing regulations its tariff rates to and from St. Louis to that industry would be exacted and the shippers so located would get the benefit of the tariff rate, and anything that he would save in the way of drayage would accrue to him.

But here is the difference. The L. & N. tracks nor the tracks of the Terminal Railway Association do not extend to these industries. Most of these industries were established where they
509 are when they knew they had to incur the expense of moving their property between their plant and various connections by street vehicles. Now, they directly or indirectly construct a track and maintain and operate that track between the industry and some point of connection with the tracks of the Louisville and Nashville or its Terminal Railway Association and incur the expense of maintaining and operating that track because it costs them less than it had heretofore to move it by street vehicle. They are certainly entitled to the benefit of the difference in the cost, but they have no right, because they have constructed that road, to demand from the

carriers less than tariff rates from point of delivery or receipt of the property to the steam carriers. The owner of an industry which establishes it itself either on the railway tracks or at some other point inaccessible to railroad tracks does so undoubtedly with his eyes open and gives due consideration to all of the conditions. If he locates on a steam railroad and constructs a siding or side tracks into his plant upon which cars can be loaded or unloaded, he is entitled to the current rate to and from that point. If he located at some other point, knowing the disadvantage, then he must incur the disadvantage; but what we are here contending against is, that because they have constructed a steam railroad they must have a reduction in the rate; that their rates must be lower than those of the man who is located where he has to move his traffic by street vehicles.

"Mr. Schnurmacher: And you are speaking of pure tap lines in your last answer—those then you consider not common carriers, but plant facilities?

Mr. Smith: The question of nomenclature I do not know has very much to do with it. You may call them tap lines, you
510 may call them switch lines, or you may call them railways, or you may call them plant facilities—it is the same thing. This whole Manufacturers Railway is a subterfuge upon the part of the big shipper and others to get a lower rate than his competitors get—that is what it is.

Mr. Schnurmacher: That is said again with some deference, is it not, to the judgment of the Interstate Commerce Commission on the subject?

Mr. Smith: Well, I hope to secure a reconsideration of the decision of the Interstate Commerce Commission; that is what I am striving for now—is to convince the Interstate Commerce Commission that they are wrong; I know they are wrong."

A reasonable rate for the services rendered by the Manufacturers Railway to the Anheuser-Busch Company and other industries would, under the circumstances, I think, be the cost of movement. It would seem to me that as that so-called railroad serves numerous industries there and is undoubtedly a convenience and advantage to them in many respects, or they would not patronize it. They should form a mutual association and take over that road and pro rate the cost of maintaining and operating it on the business done. They are not entitled, because they are located on the Manufacturers Railway, and it performs this service, to a lower rate than the legal rate established under the Act to Regulate Commerce from point of intersection with the steam road. By the legal rate I mean the published tariff rates.

I am sure that the ten cars of beer mentioned this morning moving over the L. & N. Railroad from St. Louis, from the Anheuser-Busch Brewing Association's plant to Memphis, was not re-
munerative. The rate at which that beer moved is the
511 established rate, and I presume that that rate has been published by the L. & N. Railroad, although I do not know. It was the rate made by competing lines. It is but fair to say that the L. & N. Railroad, being a much longer line, is not in the position

to compete on equal terms with the shorter lines, and it is traffic that should not, in my opinion, be handled by the L. & N. Railroad. I do not think the rate was fixed by agreement, but it was the established rate and the L. & N. Railroad seems to have adopted and published it as one of its rates. If ten carloads of beer had moved from some other St. Louis brewery, not located on the lines of the Manufacturers Railway, to Memphis over the L. & N., the L. & N. would have absorbed out of the through rate the switching charge of whoever performed that terminal service in St. Louis as per the tariff.

If a St. Louis brewery located on the line of the Wabash Railroad desired to ship ten cars of beer to Memphis via the L. & N. Railroad, those cars would be switched by some local company in order to reach our tracks, and I think probably that that switching would be done by the Wabash Railroad and delivered to the L. & N. Railroad, and that is what I have endeavored to explain is reciprocal switching. We would perform the same service for probably the same rates from industries on our line shipping to points on, or reached by, the Wabash; we would absorb the switching rate.

Assuming that in order to reach our rails the product of a brewery on the Wabash rails would have to go by way of the Terminal Railway Association, I certainly would not expect the shipper to pay the switching charges in addition to our St. Louis rate to Memphis; that is covered by the switching tariff on file and is covered by what we call reciprocal switching and the service performed by the Terminal Railroad, of which the L. & N. is one of the proprietors.

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If the Anheuser-Busch Brewing Association wishes to ship ten carloads of beer to Memphis over the L. & N. Road, it should cover the cost of moving the property from its plant to a point of interchange with the Manufacturers Railway—that is, if it uses the Manufacturers Railway, or, if it prefers, it can haul by street vehicles and load on the tracks of the Wiggins Ferry Company in South St. Louis, as it probably did do before it constructed the Manufacturers Railway. We would not expect a brewery located on the Wabash tracks to pay the cost of carriage of the ten carloads of beer to a point of interchange with the L. & N. Railroad any more than we would expect the Anheuser-Busch Company to pay the cost of moving the traffic between the Wiggins Ferry and the L. & N. at East St. Louis. If the ten cars of beer had moved by the L. & N. farther than Memphis, so far as I know we would have absorbed the same switching charges. If the same ten carloads of beer had moved to Augusta, Georgia, instead of to Memphis by the L. & N., the $4.50 per car charge of the Manufacturers Railway was paid out of a gross revenue derived, and the charge or cost to the L. & N. Railroad by its terminal association or the Wiggins Ferry Company was the same, 1½ cents per hundred pounds. So far as I know, if these same ten cars had moved to Birmingham, we would have absorbed or paid exactly the same. The revenue received by the L. & N. Railroad Company for hauling the shipment to Birming-

ham, Alabama, is greater; the distance is longer and the service is greater and the rate per ton mile is greater to Birmingham, Alabama, than it is to Memphis, Tennessee, and the shipment therefore to Birmingham, Alabama, under these various onerous conditions might possibly yield a profit, while the shipment to Memphis, Tennessee, involves a very serious loss.

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I believe, although I am not certain, that to some of the nearby local points we refuse to absorb the $4.50 per car and if the change is made it is added to the rate. I think that would be true for instance if it was going to Belleville.

"Mr. Schnurmacher: Irrespective of those exceptions in nearby cases, the fact is the longer the haul the less the percentage of the cost of switching to the total freight rate?

Mr. Smith: Let us hope so, if all——

Mr. Schnurmacher: Well, it is so, is it not?

Mr. Smith: If all traffic moved by the L. & N. Railroad Company was moved upon the same terms as the beer shipped by the Anheuser-Busch Brewing Association to Memphis was done, we would be bankrupt over night.

Mr. Schnurmacher: And you picked out the Memphis illustrations because of that fact, did you not?

Mr. Smith: Possibly, I might have been influenced by that, as it illustrated what I deemed the unjust discrimination to better advantage than perhaps it would to some other point.

Mr. Schnurmacher: And that same unjust discrimination, as you term it, would be apparent?

Mr. Smith: It would be more apparent.

Mr. Schnurmacher: If the switching had been done by any other trunk line in St. Louis for the L. & N. Railroad, or by the Terminal Railway Association, would it not?

Mr. Smith: The switching by any other trunk line, as I have repeatedly stated, is reciprocal.

Mr. Schnurmacher: I understand that.

Mr. Smith: And is absorbed in addition to the $4.50 per car which is being allowed the Manufacturers Railway; there is the trouble. The traffic we move to and from our interchange with the Manufacturers Railway pays us $4.50 per car less than any other shipment shipped to or from St. Louis and East St. Louis.

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Mr. Schnurmacher: Let us see if that is true in point of fact, Mr. Smith. There is here in St. Louis a brewery—the name has been referred to in the testimony—known as the Empire Brewing Company. Suppose they were to ship ten cars of beer from their plant in St. Louis, we will say on the Wabash Road to Memphis, Tennessee. What would the L. & N. Railroad allow for the switching of those ten cars to the point where it received those cars on its own rails?

Mr. Smith: The tariff rates.

I took the trouble to pick out the Memphis case as an illustrative case because I thought it would probably present our argument. I thought it gave the worst exhibit. But every shipment from

the Anheuser-Busch Company delivered to the Wiggins Ferry by the Manufacturers Railway pays the L. & N. Railroad $4.50 less than would each of the other shipments have paid us to the same destination. There were ten or twelve other consignors who shipped beer by the L. & N. during the same period, and all of them at least that did not make their deliveries to the Manufacturers Railway yielded the L. & N. and connecting lines a revenue of $4.50 per car more than the shipments from the Anheuser-Busch Company to the same destinations. I presume these consignors loaded their cars at the nearest point, but I don't know.

"Mr. Schnurmacher: Now, does the Louisville and Nashville Railroad Company figure or expect to make a profit in the carriage of all kinds of commodities?

515 Mr. Smith: We ought to.

Mr. Schnurmacher: Well, do you, in point of fact?

Mr. Smith: That is a complicated question.

Mr. Schnurmacher: I know, but you are competent to answer it.

Mr. Smith: Possibly, but the transactions covering shipments, large and small, by the L. & N. Railroad are very great, daily, hourly, and there may be, probably is, some traffic moved at less than cost, and that ought not to be so moved."

I had a somewhat similar condition brought to my attention where we have for years been moving a large traffic over a difficult piece of our road that I reached the conclusion had been done at less than cost and that we could not afford to continue it, and by directions a revised tariff was issued, increasing those rates, which tariff has been suspended by the Interstate Commerce Commission at the request of the shippers, and the matter is to be tried out. I do not believe a carrier is justified or can legally continue to move traffic at less than cost and undertake to recoup the loss by perhaps an unreasonable charge on traffic moved over other parts of the system. I think that as a matter of equity and policy we should not undertake to move any traffic at less than cost and we certainly should not attempt to move empty beer kegs from Memphis to St. Louis, or to the Anheuser-Busch Company, and pay something for the privilege of doing it.

The L. & N. Railroad has been a pioneer in trying to develop the coal and iron deposits in the State of Alabama and has for many years moved the raw material between the mines and furnace plants at rates that yielded very little, if any, profit. Undoubtedly, owing to the contiguity of the mineral deposits to the furnace and other plants, in part due to that of assembling, the transportation

516 costs for assembling a ton of pig iron is less than at any other point in the world. Now the L. & N. Railroad was induced to make these low rates, or did make them possibly with the judgment, because it had made a very large investment in the building of railroads throughout the State of Alabama, on which, after they were completed, there was little or no traffic, and it has for something like forty years, or say since 1872, struggled to try and build up a traffic that would repay some part of the interest on the cost of creating those railroads. It has in part been successful, although

the L. & N. has several times during that period been very near bankruptcy, largely due to the obligations assumed for that purpose of developing traffic.

We were perhaps justified in moving this raw material at these low rates because we might expect to secure a remunerative rate for the transportation of the products of the furnaces, say the pig iron. We are still doing that and our friends who are moving the pig iron are complaining that the rates we are receiving for transporting the pig iron are excessive and are appealing to us to reduce those rates very materially, and failing to secure the desired reduction, they have given notice that they are going to bring the matter to the attention of the Interstate Commerce Commission. The prospect therefore is that while we have struggled all these years and moved this raw material at cost, or less than cost, or a little more than cost, we may be required to move the product which you think should yield us a profit, and which would, or may have justified us in performing this unremunerative service, taken from us, and we may be compelled to move the pig iron at cost or a little less and be left
517 stranded with our large investment in branch and coal roads to struggle in an effort to make money elsewhere in order to pay the losses there.

In making the outbound rates on beer, I do not think we gave much consideration to the inbound freight delivered to breweries for the reason that the inbound tonnage of raw materials consumed by brewing companies seems to be but a small percentage of the total outbound tonnage. Therefore, it is not a matter of very great importance, especially in that a considerable part of the inbound tonnage consists of empties (empty beer packages) on which the present tariff rates are ridiculously low and practically amount to moving it for nothing. I do not know of what the brewing companies make their beer. We do know that they receive some [illegible] and as they manufacture ice and have cooling machinery they probably need some coal, but if I am correctly informed, the inbound traffic for a brewery is not a very important item.

We do not make anything on transporting coal which comes into St. Louis and East St. Louis. I hope that not all of our St. Louis business is done at a loss, but the coal which we haul down here from this coal district in competition with numerous other lines, especially the Suburban and St. Louis and O'Fallon lines, and all these little lines which run out into the coal districts and use our terminal facilities in and around St. Louis, renders the business unprofitable, and I should think our business, although I don't know, is becoming less and less valuable to us each year. I should say that a brewery located on the tracks of the Wabash Railway is entitled to receive and ship property at or from its plant at tariff rates, whatever they may be.

My argument is that it is illegal to absorb any charge of the Manufacturers Railway Company, whether the shipment is made
518 on behalf of the Anheuser-Busch Brewing Association or any independent industry on its line. I think I have testified to that perhaps many times within the last two or three hours. No

charge whatever should be allowed by steam railways that in any way reduce their legal published rates for the transportation of property, to and from St. Louis and East St. Louis, no matter whether the industry is located on the Manufacturers Railway or located elsewhere in the City of St. Louis. I make no distinction whatever between property moved by the so-called Manufacturers Railway, it is a subterfuge, it is not a railway. I make no distinction whatever between independent industries upon the Manufacturers Railway and the Anheuser-Busch Brewing Association. The distinction, if any, is this, that the profit which will be derived by the Manufacturers Railway from these excessive allowances reverts in an indirect way to the owners of the Anheuser-Busch Company, that is the only distinction, and so far as the steam railways are concerned they should all be placed on the same basis. Whatever the cost is of moving the traffic between the industry and the steam railroads should be assumed by the owners of the property and I make no distinction between the Brewing Association and anyone else.

If a shipper on the line of the L. & N. Railroad, or near it, owned shares of stock in the L. & N. Railroad and required switching service by a terminal line to reach our tracks, I would not say that by reason of such shipper's ownership of some of the stock of the L. & N. Railroad, that the L. & N. should decline to absorb the intermediate switching or terminal charges.

The distinction I make between this shipper and the case of the Anheuser-Busch Brewing Association is very clear. If an
519 owner of an industry located on or near the L. & N. owned one or more shares of stock in the L. & N. it would have no influence whatever upon the management, and the benefit derived by that shipper from having the traffic moved over the L. & N. would be practically nil, he would never know the difference, it would not in any way affect his dividend that he might receive on his stock, if he received any. The case of Anheuser-Busch Brewing Association is quite different. I believe the facts are in the record that the same interests that own the Anheuser-Busch Company own practically all of the Manufacturers Railway and that the Manufacturers Railway originally belonged to the Anheuser-Busch Brewing Association and was originally created for the purpose of moving its traffic, reducing the cost of moving its traffic between the plant and the St. Louis, Iron Mountain and Southern Railway. Now, if a reduction in the rates of the steam railroads is secured by an allowance to this Manufacturers Railway, which is owned largely, if not altogether by the same people who own the Anheuser-Busch Company, the benefits or profits accruing to the Manufacturers Railway in a way reach the same persons that receive the profits of the brewing company. The real object is to secure a reduction in the rates of the steam carriers that is not granted to other competing breweries. The reason that independent shippers on the line of the Manufacturers Railway are not entitled to any reduction from the point of interchange is that most of their plants *are* located where they are when they paid the cost of moving their property between their plant and the various steam railroads. Now the Anheuser-Busch Company,

through the Manufacturers Railway, builds a track to them and proposes to do their switching. These independent industries are entitled to the difference, if there is any difference between the
520 cost of moving the traffic between their plants and the various steam railroads, and what the Manufacturers Railway charged them. A number of these industries are not located on the tracks of the Manufacturers Railway, but are located in that vicinity and haul their products to and from the tracks of the Manufacturers Railway, and this seems to be done in some cases where it would be just as convenient and cost no more to haul the same traffic between their plants and the tracks of the steam roads. The Manufacturers Railway, under existing conditions, receives from the steam roads, $4.50 per car. There may be a profit in that and they may in some way hand some of that back to the shipper and run the risk of being sent to the penitentiary. I do not know that that is done, but when you look over the list of the industries that are not reached by the tracks of the Manufacturers Railway, but that still patronize the Manufacturers Railway and haul their stuff to and from the tracks of the Manufacturers Railway, when, without additional cost they probably could haul to and from the railroad depots, it certainly has a leaning toward somebody that ought to go to the penitentiary. It may be that they get prompter service and get cars when they want them, but it does not seem to be reasonable. In practice we usually find that the more different organizations that undertake to handle the property, the more time it takes and the more delay results.

"Examiner Mackley: In what form would you compensate these independent shippers for the difference?

Mr. Smith: They are not entitled to any compensation.

Examiner Mackley: I thought you said they were entitled in some cases to a difference.

Mr. Smith: Yes, that is legitimate enough.

521 Examiner Mackley: Who would pay them, and in what form?

Mr. Smith: They should pay it, the owners of the property should pay the cost, whatever it is; if it is less than it is to haul it they are benefited."

If anyone, a person, corporation or firm, locates an industry not on tracks of any railroad, they know that they must incur the cost of moving the property they ship or receive between their plant and the railroads at their own expense. If they establish their industry on the tracks of the Manufacturers Railway they do so with their eyes open, they have notice, or should have notice, that the Manufacturers Railway is nothing but a switching line and that the steam railroads do not, willingly at least, make themselves a party to through rates and through routes between points on that railroad and points on their line, and they have notice that if they do establish their plant there, they may at least, and probably will, be called upon to bear the expense of switching their property between their industry and points of interchange with steam roads, just as though they had located somewhere else in the

city. They know about this contention. Of course, if the conspiracy works and is successful they may receive a reduction in their rate to the extent that the Manufacturers Railway may make concessions to them out of the undue proportion of the rate that it receives from the steam railroads.

The Louisville & Nashville Railroad has numerous tap line connections, but in no case does it allow any part of the rate. We have one very important case, and as I have explained in my previous testimony, it was the contention over that case that caused me to take an interest in this particular case, and that is a railway that has been constructed and added to by what is now known
522 as the Tennessee Coal and Iron Railway Company, controlled by the United States Steel Company. They own and operate numerous furnace plants and a very large and important steel plant, including a rail mill, and operate numerous coal and ore mines, etc.—by far the most important industry of that kind in the South. They have connected most of these plants with railroads they have built or acquired as they absorbed the various industries. They started on a comparatively small scale with two or three furnaces and have gradually absorbed other furnaces and have constructed mills, etc., until they have become a very important industry, have quite a large mileage, not two or three miles of main line like the Manufacturers Railway, but probably twenty-five or thirty miles of main line with numerous branches. Now they demand that the railways shall make rates to and from points on their railroad and allow them a proportion of the rate. They have been very persistent in their actions and have been denied, but when the Interstate Commerce Commission decided that the Manufacturers Railway was a common carrier, "why, that settles our case; we must have it now and we are going to have it". They managed to get hold of a bankrupt road which was in the hands of a receiver, and by trying to play that bankrupt road against the other roads, as our friends of the Manufacturers Railway used the St. Louis & Southwestern to play against others, they got that road to establish rates with them and give them part of the rates, and on the request of those of us who were opposed to it the Interstate Commerce Commission suspended those rates and ordered a trial. We tried to get representatives of the Tennessee Coal and Iron Company to submit the matter to the Commission, but they were averse to doing
523 that. They preferred to avail of the weakness and incapacity of the railroad management to work their schemes through without going through the Interstate Commerce Commission and the courts. Now, then, they were by far the largest concern of that kind in that district and a number of independent industries have located on its line. They were located there because they thought they wo-ld get some advantage. These people had coal mines and they could get their coal at perhaps more favorable terms by locating there than if they located elsewhere, and other inducements were offered. But at the same time the Birmingham Southern Railroad, the Tennessee Coal and Iron Company's railroad, wanted an allow-

ance to and from these independent industries. If we allow that, where are we going to stop?

Now if the United States, through the Interstate Commerce Commission, apportioned to the Manufacturers Railway a part of a through established rate on traffic to and from St. Louis, they must, it seems to me, do likewise with these other railways, although they may not be so important in the amount of traffic moved.

In my opinion the value of the traffic moved by the Manufacturers Railway is greatly exaggerated, that is, the value to the various steam roads. I don't quite understand how it is possible for the traffic received by and shipped by the Manufacturers Railway to and from the Anheuser-Busch Brewing Association to be anything like one-thirtieth of the total traffic moved to and from St. Louis, but if that be true, is the fact that they are the biggest shipper in and out of St. Louis a justification for unjust discrimination? Is it not, on the other hand, a good reason for requiring that immense and profitable concern to pay certainly as much for the
524 service rendered by the steam railroads as a small concern. We could not, under the law, make them a lower rate, no matter if we had all their business or part of it, than we make to other shippers under similar circumstances and conditions, but I am sorry to say that was not the policy of railroads until they were required by the law to treat all shippers alike. It is only the restraining power of the United States Government that keeps these railroads in order at all.

Now no matter how you may construe the opinion of the Commission in this case, I do not undertake to reconcile my opinion with the opinion of the Interstate Commerce Commission. If the Interstate Commerce Commission adheres to their position which they have assumed and do allot to the Manufacturers Railway a proportion of our revenue, thereby reducing our rates, I hope that we will succeed in reversing the decision of the Interstate Commerce Commission through the courts as provided by the Act. I do not exactly understand that the revocation of the suspension orders allows our filed tariffs to go into effect pending further determination of this case. I believe that under the decision of the Interstate Commerce Commission that the Manufacturers Railway was a common carrier, that it follows that the steam railways might legally enter into an arrangement for a division of the rate, but it has not fixed that division. It notified the railways that they must assume the responsibiltiy of doing it, and if they allowed them too much they would be responsible. I presume that today we are operating under these tariffs referred to in the opinion or under some other tariffs which may have been issued later.

If a shipment was tendered the Louisville & Nashville Railroad Company at Memphis, consigned to N. K. Fairbanks and
525 Company, and a certain delivery stipulated, we would, of course, transport the property at the tariff rates. We must transport the shipment at current tariff rates and if the tariff as legally issued requires us to absorb the switching charges of the Terminal and the Iron Mountain we would absorb it; it would

depend altogether upon the tariff. I would not call it an illegal absorption in that case; it would become reciprocal switching. If we accept a shipment from Memphis, consigned to points on the Manufacturers Railway, we would transport it at the current tariff rates, and if our tariffs, as they now stand, require us to pay that $4.50, we would pay it as we have been paying it, but still it is illegal and the L. & N. Railroad, in my opinion, is subject to penalty for violating the law. I don't believe that this excessive charge, and I hope not any charge, will be allowed the Manufacturers Railway on final adjudication. The difference in the character of the service, whether rendered by the Iron Mountain and the Terminal Association, or by the Manufacturers Railway, is that one is reciprocal and the other is not.

The Louisville & Nashville Railroad pays for the use of cars belonging to other railways 30 cents per diem for a certain part of the year and 35 cents per diem for a certain part of the year. On equipment not operated on the per diem basis, that is, on private equipment or refrigerators, I think we pay three-quarters of a cent per mile. I assume we pay the American Refrigerator Transit Company per mile for the use of its cars just as we pay the owners of other private equipment. I assume the rate is uniform on private equipment. There is this difference in the case of the ten cars of beer shipped from the Anheuser-Busch Brewing Association to Memphis over the L. & N. Railroad; that a portion of those
526 shipments were made in the cars of the St. Louis Refrigerator Car Company, which I understand is owned largely by the interests that own the Anheuser-Busch Brewing Association and the Manufacturers Railway. No matter who the owner is of the private equipment, I assume we pay uniformly the same rate per mile, three-quarters of one cent, so this is another evil that is brought about by competition between the railways for the traffic moved in these refrigerator cars owned by private corporations.

"Mr. Schnurmacher: When I asked you whether you would say it is illegal for the Louisville and Nashville Railway Company to absorb switching rates paid to a terminal company carrying cars to the Louisville and Nashville for a shipper who is also a stockholder of the Louisville and Nashville Railroad, you replied by saying that if he owned only a share or two the result would be inappreciable in any dividends he might obtain and therefore you would not refuse to absorb the intermediate switching charges. Suppose that the shipper, instead of owning one or two shares, owned a thousand or two shares, would that make any difference in your answer?

Mr. Smith: No, that is too small.

Mr. Schnurmacher: Where do you draw the line?

Mr. Smith: I do not draw the line.

Mr. Schnurmacher: You do not draw the line. But in the case of the Anheuser-Busch Brewing Association you draw the line because some of the stockholders of the association are also stockholders of the railway corporation; is that right?

Mr. Smith: I think the record shows that they practically own

all of it and that any profit accruing to the Manufacturers Railway through this excessive allowance reverts to the same owners that owned the Anheuser-Busch Brewing Association, and in
527 that way it is an indirect concession to its big shipper, which is illegal.

Mr. Schnurmacher: You are aware, are you not, that all those facts were before the Commission?

Mr. Smith: I suppose so.

Mr. Schnurmacher: Where do you draw the line in the case of stock ownership in the Louisville and Nashville Railroad Company?

Mr. Smith: I do not draw the line.

Mr. Schnurmacher: No matter how much stock the shipper may own, it is proper to absorb the switching charges in his business, is it?

Mr. Smith: The stock of the Louisville and Nashville Railroad Company is sixty million dollars ($60,000,000). If he owned it all, or nearly all, he would not be bothered much about switching property.

Mr. Schnurmacher: That may be, but for the purpose of my argument, where do you draw the line, if at all?

Mr. Smith: I do not draw the line; I will let you do that."

Redirect examination:

Mr. Stone: You have been asked whether your opinion accorded with the opinion of the Commission in this case, Mr. Smith. I want to read to you an extract from the last report, being the twenty-fifth annual report of the Interstate Commerce Commission, on page 12, and ask you whether or not your opinion harmonizes with that of the Commission that I am now going to read:

"The evils most difficult to detect and to prove today are those arising out of the community of interest of certain carriers and industrial corporations. The ownership of industrial cor-
528 porations by carriers and of carrier corporations by industrials is frequently taken advantage of to defeat that equality between shippers which the act contemplates. This is accomplished by unreasonable divisions of joint rates forced upon the carriers by powerful shippers who control industrial railroads. Such arrangement may be legal in form, although certainly illegal in effect. We find that a certain number of large industrial concerns control tracks and terminal facilities nominally owned by small railroad corporations which do not rise to the dignity of common carriers, but which are treated as such by the connecting carriers. As the result, the connecting carriers make a switch allowance or division of the joint rate to such terminal lines, which practice unquestionably results in discrimination and places the industrial at an advantage in the market."

Do your views agree with those expressed in the extract from the last report of the Commission?

Mr. Smith: They do.

Mr. Schnurmacher: You understand, of course, Mr. Smith, that the extract just read to you has reference to tap lines or pure indus-

trial lines of railway, do you not, which have not risen to the dignity of being common carriers; you understand that, do you not?

Mr. Smith: No, I do not. I do not make any distinction between what you term a tap line or industrial line or common carrier that is nothing but a switching line.

As I have already testified, the interests of the Louisville and Nashville Railroad Company in the business of the Anheuser-Busch Company is not relatively important to it. We have never participated to any great extent in at least the profitable part of the traffic controlled by that company, and it is possible that the action we are now taking and the interest that the Louisville and Nashville Railroad Company is now taking in this con-
529 tention is certainly in part due to the very serious effect upon the interests or revenues of the Louisville and Nashville Railroad Company that must necessarily result from a decision by the Interstate Commerce Commission and the courts that such allowances are legal and may be enforced. Necessarily it becomes a precedent that will be used against the L. & N. Railroad to an extent that will seriously affect its revenues. This you might say is the leading case and the decision in this case necessarily will control in other similar cases that may arise hereafter.

J. D. Watson, a witness called on behalf of complainants, testified:

I am Assistant General Freight Agent of the St. Louis Southwestern Railway, St. Louis, Missouri. I have charge of the Tariff Department of the St. Louis Southwestern Railway. My experience in that particular department in St. Louis has been something over seven years. During that time I have had active charge of the Tariff Department, which means the publication of the tariffs and division sheets and absorptions of the St. Louis Southwestern. It also means investigating and considering and deciding on behalf of the St. Louis Southwestern whether the amounts so fixed are reasonable for the services it renders. I have been in railroad service over thirty years, divided among the traffic, transportation and machinery departments of the St. Louis, Iron Mountain and Southern and St. Louis Southwestern. I have only worked for these two carriers. To a large extent I am familiar with the character of the movements relating to terminal switching in St. Louis as performed by the various carriers who do terminal service. I am famil-
530 iar with the terminal charges made in St. Louis for terminal services rendered by various carriers to the extent that we examine into that feature very thoroughly in providing the absorptions that we pay out of the St. Louis rate. The following line carriers have terminals of their own: Missouri-Pacific, Frisco, Iron Mountain, Burlington, Wabash, Rock Island and M., K. & T. With the possible exception of the M., K. & T., each of these line carriers have switch tracks or other tracks upon which they render terminal services in St. Louis in connection with the line haul performed by some other carrier.

It is the practice under our effective and filed tariffs to absorb the switching charge of these lines out of St. Louis rate. There is no

common carrier in St. Louis other than the Manufacturers Railway Company, rendering terminal service, which renders that service exclusively, that is, the Manufacturers Railway is the only one that has not in connection with it either a cross-river haul or a line haul on some of its business.

In the opinion of the Commission in this case, at page 308, reading, "The St. Louis Transfer Company, one of the subsidiary companies of the Terminal Railway Association, has a line along the river bank," is obviously a typographical error, as the correct name of the railway company that has its line on the river bank is the St. Louis Transfer Railway.

The St. Louis Transfer Railway is the West Side rail line of the Wiggins Ferry Company. The Wiggins Ferry Company is known as the water lines—the boats and transfer service—and the East St. Louis Connecting Railway is the East Side railway of the Wiggins Ferry Company. These three elements together are commonly described and referred to in railway parlance as the "Wiggins".

531 There is also a "St. Louis Transfer Company", which renders common carrier service in St. Louis by team. It renders no railroad service and is entirely a team service.

I am familiar with the various tariffs which were effective between the St. Louis Southwestern and the Manufacturers Railway since 1906, with the history of those tariffs and what they provide as to the cost of separate cost of service over what is now the Manufacturers Railway Company, and how treated as to the St. Louis rate.

Under the absorption tariffs of the St. Louis Southwestern Railway, our Tariff 3869, I. C. C. No. 2250, Supplement 12, effective August 23, 1906, we absorbed out of the St. Louis rate on competitive carload traffic—$3.50 on beer and $1.50 on beer packages. On June 18, 1908, as per Supplement 17 to the same tariff, the charge was corrected to apply on beer and other brewery products and a charge of $2.00 per car added on other carload freight for delivery on the Manufacturers Railway, these charges being assumed by the St. Louis Southwestern Railway out of the St. Louis rates upon competitive carload business.

On January 11, 1909, the Manufacturers Railway connection with the Wiggins Ferry Company was provided for by providing an absorption of $5.50 per car on outbround carload freight from industries on the Manufacturers Railway to the Wiggins Ferry connection, and $3.50 on empty beer packages from the connection of the industries on the Manufacturers Railway, and at the same time an allowance of $3.50 per car on outbound carload freight and $1.50 a car on inbound beer packages was provided for the St. Louis, Iron Mountain and Southern connection; those rates being pro-

532 vided in Supplement 19 to the tariff just mentioned, effective January 11, 1909.

By way of explanation I will say that the charge to the Iron Mountain connection was the charge of the Manufacturers Railway. In addition to that charge we paid the Iron Mountain Railway for their service from that connection to the cross-river line. The Iron Mountain's switching charge was $3.00 per car from the connection

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with the Manufacturers Railway to its connection with the Wiggins Ferry Company.

Effective January 1, 1910, Iron Mountain established a tariff which provided for the same cross-river charge to the connection with the Manufacturers Railway as it formerly applied to the Carondelet end of their cross-river ferry service. And effective with that date the charge of the Manufacturers Railway and our allowance to the Manufacturers Railway was changed to read $5.50 per car on outbound freight and $3.50 per car on beer packages to either of the Iron Mountain or the Wiggins Ferry Company connection. The allowance was continued in effect until March 1, 1910, when the allowance of the Iron Mountain connection was canceled. The allowance of the Wiggins Ferry connection was continued in effect until August 13, 1910, on which date that allowance was canceled.

Effective January 1, 1911, we published in Supplement No. 6 to our Tariff No. 5650, I. C. C. No. 2960, an allowance of $4.50 per car on all competitive freight to and from the Manufacturers Railway connection with the Wiggins Ferry Company. That supplement was suspended by the Interstate Commerce Commission under their I. & S. Docket 27-A to May 1, 1911, and subsequently was further suspended until August 28, 1911. Under order of the
533 Commission dated July 3, 1911, that suspension was vacated and the rate became effective July 15, 1911, and is still in force.

I have not the tariffs and the absorption tariffs of the lines east of the Mississippi River, but assuming that they absorbed the charge of the Manufacturers Railway, which was $3.50 per car on beer to their connection on the Iron Mountain Railway, and the tariff of the Iron Mountain, which was ½ cent per hundred pounds, minimum $3, to its connection with the Wiggins, they would pay the $3.50 charge to the Manufacturers Railway, the $3 charge of the Iron Mountain for its service and the cross-river charge of the Wiggins Ferry Company or either of the bridges. The total amount would be $6.50 plus the cross-river haul and the Cotton Belt paid this out of the St. Louis rate on competitive traffic only, at that time. At the time the Manufacturers Railway began to operate its own line under the tariffs which became effective under its own operation it made a difference in the amount which our line had to pay for competitive traffic to points on the Manufacturers Railway, that is, the difference between $6.50 and $5.50, so that as a result of the Manufacturers Railway taking over the operation of its own line we saved $1 a car. I am not competent to testify as to other lines as I am not familiar with their tariffs. The tariffs on file would show.

Terminal service is rendered in St. Louis by some of the St. Louis lines for which there is no uniform basis of charge. The charges are based in cents per hundred pounds with certain minimums and in dollars per car. In my judgment, the flat charge of $4.50 per car for switching service performed by the Manufacturers Railway is not excessive when compared with charges we pay for similar service to other carriers doing the same class of service.

534 The rates of switching in St. Louis illustrative of the service rendered by other lines are provided in Agent Leland's Tariff 1-D, I. C. C. No. 881.

The Wabash Union Depot Line has its connection with the Terminal Railway Association between Twenty-second and Twenty-third streets and to their Rate District No. 44, which is the territory between Twenty-second street and Vandeventer avenue, which is 3960 west, its charge is one per cent per hundred pounds, minimum $5.00, on competitive traffic, that is, traffic competitive with the Wabash, and three-quarters of a cent per hundred pounds, minimum 40,000 pounds, on traffic which is not competitive with the Wabash. A shipment to one of these industries located in that district would cost the St. Louis-Southwestern Railway, either to get it or deliver it at the Wiggins Ferry track, either one cent per hundred pounds, $5.00 minimum, on a shipment which was competitive, or three-quarters of a cent per hundred pounds, minimum 40,000 pounds, from territory not competitive with the Wabash.

In Rate District No. 45 of the Wabash Union Depot Line, which covers territory from 3900 west to Newstead avenue, 4400 west, the charge is one cent per hundred pounds, $5.00 minimum, on either competitive or non-competitive traffic. Therefore, for a service which is approximately the same distance as the service of the Manufacturers Railway from Obert's brewery to the connection with Wiggins Ferry we paid the Wabash $5.00 a car while we paid the Manufacturers Railway $4.50 a car. In this case the service performed is distinctly a terminal service, that is, there would be no revenue other than the revenue for the terminal service.

535 The Wabash North Side line is divided into rate districts Nos. 40, 41, 42 and 43, which extend as far north as Baden. That traffic is received from the Merchants Bridge at East Grand avenue, and the charge for that service to rate districts Nos. 40 and 41 on competitive traffic is one cent per hundred pounds, $5.00 minimum, and on non-competitive traffic one-half cent per hundred pounds, $4.00 minimum. To rate districts Nos. 42 and 43 the charge is one cent per hundred pounds, $5.00 minimum, on all traffic. To points on the Missouri Pacific Railway, in rate district No. 11, the traffic being delivered to the Missouri Pacific by the Merchants Bridge at Twelfth street, its charge is two cents per hundred pounds, $6.00 per car minimum, on competitive traffic and one cent per hundred pounds, $3.00 per car minimum, on non-competitive traffic, excepting on lumber. On lumber the charge is 1½ cents, $5.00 per car minimum, whether competitive or non-competitive. That district includes industries on their Oak Hill line south of McRae avenue to and including Carondelet Park, and their main line points west of Kingshighway to Maplewood.

Missouri Pacific's rate district No. 10, the charge is three-quarters of a cent per hundred pounds, $3.00 per car minimum. That includes all their industries, Spring avenue 3700 west to Kingshighway 5000 west and industries on their Oak Hill line to and including McRae avenue, which includes various industries between the connection with the Terminal and rate district No. 11. The tariff

itself is probably the best reference, and it is published in very comprehensive shape.

We have no rails in St. Louis reaching the terminals through our contract arrangement with the Iron Mountain at Dupo, Illinois, therefore on all St. Louis traffic we pay some terminal line. Our terminal absorptions are provided in our tariff No. 5630, I.
536 C. C. No. 2960. I will read one paragraph in that tariff which indicates the maximum absorption on competitive business. This is item No. 12:

"On competitive traffic carloads (except articles taking lumber rates or arbitraries higher) to and from delivery tracks or industries or warehouses located on the tracks of the Frisco System, Cheltenham and east thereof, we will pay Frisco switching charges not to exceed two cents per hundred pounds, minimum 30,000 pounds per car, also a switching charge not to exceed $5 per car on similar traffic to and from delivery tracks, warehouses or industries located on the tracks of the Wabash Railroad and other connecting lines in St. Louis."

Now that absorption does not in all instances cover the actual charge made by the terminal line for the service. In such case the difference is added to the rate.

I am familiar with the effect of the tariffs in effect prior to March, 1910, so far as they amounted to an absorption out of the business done with our line. Under the operation of the former tariffs the Cotton Belt paid more than they would have paid had the charge been fixed on the flat basis of $4.50 per car, for the reason that there were a great many more cars of the higher class than there were of the lower class, so the general average would not be anything like $4.50, so that the flat rate is cheaper for our line.

The charge of the Manufacturers Railway to March, 1910, was rather unique. The usual switching charge is the same whether it is one character or of another, that is, whether it is high class or low class freight.

The charge of the Manufacturers Railway just prior to
537 cancellation compared very favorably with the charges which we paid for similar terminal service on our traffic. The flat $4.50 a car charge of the Manufacturers Railway is less than we now pay other lines for the same service. If the Manufacturers Railway had charged more than $4.50 a car it probably would have been considered unreasonable by some of the carriers. All of them are not situated as we are and undoubtedly for that reason the Manufacturers Railway found it to their interest to establish the rate on the basis of $4.50 and we were glad to take advantage of it. If I had been making the tariff for the Manufacturers Railway and trying to fix it at a reasonable amount under all conditions, I believe I would have undertaken to adopt the same basis as is applied and is effective by the Wabash Railroad for their Union Depot line; that is, one cent per hundred pounds, $5 a car minimum.

Our dealings with the Manufacturers Railway has called to my attention the character of the service that it renders for shippers. Its service is considered good service—good service as terminal ser-

vice goes in St. Louis. The terminal service in St. Louis is fairly good, and as compared with this general condition of fairly good service, I regard the service of the Manufacturers Railway as good. I am familiar with the operating contracts between the Manufacturers Railway and the Cotton Belt that have been introduced in evidence. I would assume these contracts to be advantageous to the Manufacturers Railway, because the Manufacturers Railway Company had a Second street line on which it was endeavoring to develop traffic. It had constructed a yard at Park avenue which it desired to use to its capacity if possible. It also contemplated the construction of a freight station at about Second street and
538 La Salle street, or in that neighborhood, to serve the South St. Louis business interests.

We now have a station at Second and La Salle streets on the Iron Mountain tracks. The object of one of these contracts is to provide a freight station to serve that particular section which is to be used by the Cotton Belt when completed.

In making use of this terminal of the Manufacturers Railway we would be getting the same service in South St. Louis under our contract that we could expect to get from the Terminal Railway Association in North St. Louis, a service which the Terminal Railway Association could not give us in South St. Louis, therefore, unless we get the service from the Manufacturers Railway, we could not get it at all. The Terminal Railway Association could not give us this service at South St. Louis because it does not reach the territory involved. The only other line in that territory is the Iron Mountain. Our service from the Iron Mountain was not what we considered it should be and we were paying considerably more for the service than we would pay under these contracts. Naturally the Manufacturers Railway would consider that the Cotton Belt was going to make use of this terminal to the extent of its facilities.

The principal commodity handled over our line in connection with the Manufacturers Railway is lumber. Lumber usually reaches St. Louis on a very low rate, the rate from the yellow pine district being 19 cents per hundred pounds. Prior to establishing this rate of 19 cents this lumber arrived at St. Louis on a spent rate and we did not absorb the switching charges at St. Louis. We now absorb the switching charges. In actual practice and operation under these contracts we have operated over the Second street line of the
539 Manufacturers Railway north of Dorcas street. The Anheuser-Busch Brewing Association makes no use of that part of the Manufacturers Railway, so far as I know.

The tariffs of the Manufacturers Railway are of no avail in securing a part of the St. Louis rate unless the St. Louis lines accept them. The tariff of the Manufacturers Railway is provided in the same issue to which I have referred (Leland's 1-D). The Louisville and Nashville Railway's entrance into St. Louis is in connection with other lines the same as our own.

The general custom in St. Louis by which each of the defendant lines which have terminals of their own in St. Louis render switching services in connection with the line movements made by other lines

and the charge for that independent switching was absorbed in the St. Louis rate is still in effect up to the limits specified in the switching and absorption tariffs.

The general situation in St. Louis is that all shippers and industries located within the switching limits of St. Louis who are on or near spur tracks receive and ship at the St. Louis rate without paying anything additional for terminal or switching charges. The specific delivery in St. Louis must be specifically provided for in the tariffs of the absorbing line in order to make this operative. I know of two breweries in the City of St. Louis which are competitors of the Anheuser-Busch Brewing Association which are served by lines of railway other than the Manufacturers Railway, and there may be more. These breweries receive shipments and make shipments at the St. Louis rate with the switching charges absorbed by the Cotton Belt, and it is my impression that absorption tariffs of other lines also provide for it. The two breweries I have in mind are the National Brewery and the Empire Brewery.

540 The National Brewery is located on Eighteenth street on the Terminal tracks (Missouri Pacific tracks). I assume that the National Brewery forward and receive shipments at its own doors on spur tracks at the St. Louis rate with the switching charges absorbed in the St. Louis rate. The tariffs filed with the Commission will show.

The Empire Brewery is located on the Wabash Union Depot tracks at about 3200 Spring avenue in the Mill Creek Valley. So far as the Cotton Belt is concerned, the switching charges of the Wabash to and from this brewery are absorbed in the St. Louis rate, and I assume other lines make the same absorption. There are industries such as coal dealers and lumber dealers located on the Manufacturers Railway who have competitors in St. Louis located in other portions of the city and served in a terminal way either the Terminal Railway Association or the Wiggins Ferry, or by the St. Louis lines having their own terminals, and they receive deliveries at their door at the St. Louis rate with the switching charges absorbed.

This is true with reference to the Cotton Belt, and so far as I know it is true with reference to all the defendant lines. The Cotton Belt does not absorb any portion of the inter-works (inter-plant) charge of the Manufacturers Railway or of any other line, but the tariffs of at least one line show a charge for that service and I believe it is $1 per car. Missouri Pacific-Iron Mountain Tariff No. 5651, I. C. C. No. 9532, Item No. 13, reads as follows:

"When cars are placed at one point and ordered moved to another point in the same industry a switch charge of $1 per car will be made."

541 It is my understanding from statements which have been made to me that $1 is the usual charge in St. Louis for such service, and so far as I have been able to determine from any of the absorption tariffs, it is not absorbed by any of the lines. I would not say that this charge is unreasonable or excessive, but it is undoubtedly unremunerative.

I believe that the movement described by Mr. Moore as a weighing movement, for which the Manufacturers Railway charged 25 cents, is a universal charge. I have found in the same tariff (Missouri Pacific-Iron Mountain 5651, I. C. C. No. 9532), Item No. 12: "When cars are placed on private scales of an industry for weighing a charge of 25 cents per car for engine service will be made."

The best illustration of a switching charge in St. Louis being limited by city franchise or city ordinance is the Burlington charge of $1 for a switching service, which apparently from the tariff is irrespective of the length or difficulty of the movement, but this is a local switching movement as distinguished from an interchange movement.

Cross-examination by Mr. Colston:

As I recall it, Mr. Moore testified that his actual cost was something like $3.88 per car. If it cost him $3.88 per car he could not perform very much service at $2 a car. This is part of Mr. Moore's testimony to which I referred when I said that the $2 ordinance charge is not to be taken as a measure for fixing the charges of the Manufacturers Railway on interchange business. I stated that the charge of $4.50 of the Manufacturers Railway was a reasonable charge in comparison with rates of switching of carriers who were also switching carriers, also as compared with the rates of the Terminal Association. I stated the facts as shown by the tariffs. The amount of $3.50, to
542 which I testified as having been paid to the Manufacturers Railway before the Manufacturers Railway Company assumed the operation of its line in 1909 was paid to the Manufacturers Railway. The payment was made for a service performed up to the Iron Mountain tracks. The connection of the Iron Mountain at that time was practically the same as today. The Iron Mountain operated the Manufacturers Railway to an extent only. The Manufacturers Railway performed other service, as we understood it, and we paid for the other service because we were forced to do so by other lines. Not only was that the case with the Manufacturers Railway but with a great many other railways of the same character at that time.

I do not know as to the physical operation of the property by the Iron Mountain. My knowledge is derived from the statements shown in the tariff. We paid $3.50 for the service of the Manufacturers Railway, whatever that service may have been, but I do not know what that service was. Our general freight agent at the present time has charge of solicitations. Our traffic manager has charge of the traffic department. The traffic manager, of course, has charge of the rate policy. As a general proposition, he establishes the policy and I have the work done in accordance with the principles laid down by him. The tariff does not say that the interwork (interplant) movement of which I spoke is an additional movement and applies where a car is placed upon coming in for unloading and is then moved again and placed for loading, and is then moved for an outbound shipment. The tariff indicates it is for a move, but does not indicate for what purpose it is made. It reads: "When cars

are placed at one point and ordered moved to another point
543 in the same industry the charge is $1 per car." It would apply to additional movements. I do not know what it is intended to cover; it is in the Iron Mountain tariff.

Redirect:

Mr. Kirby: Is there any fact in your mind bearing on the reasonableness or unreasonableness of the rates now being charged by the Manufacturers Railway Company, or the rates which were canceled as of March 1, 1910, that you think would be of value to the Commission in passing upon the question of reasonableness, and that you have not already testified about in answer to questions or cross-questions? If there is any will you supplement what you have testified to by adding it? I want to make sure you have given us as much information as you have and that our questions have not omitted anything.

Mr. Watson: Only to the extent that after the decision, or after the case was first heard and the rates were canceled the St. Louis Southwestern Railroad re-establish the rate on the basis of $4.50, which was the rate filed by the Manufacturers Railway on its traffic, and the fact that that rate was established by the St. Louis Southwestern Railway at that time indicated its idea, that is, the idea of the St. Louis Southwestern and its traffic manager, as to the reasonableness of the rate.

Mr. Kirby: Let me ask you in that connection was the reasonableness of that rate in fact inquired into and considered by the officials or employes of the Cotton Belt before the Cotton Belt consented to that rate?

Mr. Watson: It was most certainly very carefully considered.

Recross:

Mr. Colston: Do you know whether your superiors who directed the establishment of that rate had any idea that by establish-
544 ing it they might get some of the business of the Anheuser-Busch Brewing Association or other business controlled by the Manufacturers Railway that they might not otherwise get and that would go to a competitor of yours—for example, the Iron Mountain?

Mr. Watson: It is just by chance that I do know. Mr. Farrell, who is our traffic manager, was called away last evening and could not be here, and he asked me if I would not endeavor to make clear, in the event that question was asked, that the Cotton Belt Railroad did not consider in any respect the business it could expect to receive from industries on the Manufacturers Railway tracks when it fixed the charge or the absorption at $4.50. It considered it was right, proper and fair by every measure we know, and we established the rate for that reason and without any prospect of getting any larger share of the business than we would get under ordinary conditions.

Mr. Colston: Did you come to that conclusion before or after you had discussed or your superior officers had discussed or considered the special contract which allowed you a rate of $1 per car for which other carriers were to be charged $4.50?

Mr. Watson: The contract, I believe, speaks for itself. It is very clear as to the benefits we expected to derive from the contract.

Mr. Colston: I just asked you as to the time—did you come to that conclusion before or after you executed this contract?

Mr. Watson: The contract was considered about the same time.

E. C. FINLEY testified:

I am chief engineer of the Manufacturers Railway and
545 have been so employed for nearly a year. I entered its em-
ploy about the first of March, 1911. Briefly, my work is in connection with the construction and extensions, new yards, sidings and general maintenance work.

Since I entered the service of the Manufacturers Railway Company we have extended the Second street main line to Potomac street, beginning at about Utah street, diverging from Second street and entering De Kalb street at Cherokee, thence continuing along De Kalb street to Potomac street. This track goes diagonally across private property from a point at the intersection of Utah and Second streets to where it enters De Kalb street at about Cherokee street, then it continues along public property or streets to Potomac street, and is laid on public highways pursuant to an ordinance of the City of St. Louis authorizing it. This extension is 1,182 feet. No part of this track construction is for the benefit or use of Anheuser-Busch Brewing Association. They have no use in the world for that trackage. This track was constructed for general use, for industries in that part of the city, or for industries that might afterward be in that part of the city. This construction is a part of our general extension to the southwest city limits, which we are required to construct under ordinance.

We have extended and partly rebuilt what is known as the river yard. We have constructed approximately 3,500 feet of additional track. This was constructed for a classification yard.

We built transfer tracks to receive freight from the Wiggins Ferry or St. Louis Transfer Railway, approximately 1,162 feet of track.

We built additional tracks in what is known as the Stecher yard at Seventh and Pestalozzi streets.

We built additional tracks at Second and Barton streets. At this
last named point we constructed 2,010 feet of track. A por-
546 tion of that track is to serve the Eau Claire-St. Louis Lumber
Company, and a portion is for general utility tracks for general business.

We have also made some little extensions in what is known as the postoffice yard. We have added to that yard about 240 feet of track. Our purpose in increasing this postoffice yard is to accommodate new business on team tracks. No part of this yard is used by the Anheuser-Busch Brewing Association. It is used exclusively by independent patrons other than the brewing companies. At Trudeau street we increased that yard by adding 105 feet of track. It was done for the purpose of increasing team tracks for general business. The brewery would have no use for that track. It is too far removed.

At Park avenue we have built a yard with approximately 2,500 feet of track. This was intended for team tracks for general business. It is about a mile and a quarter from the Anheuser-Busch plant, and no part of the brewery's business is done in that yard. It has no use in the world for those tracks.

At Second and Convent we have built some tracks for the purpose of general business, and near it is located an industry, the Laclede Gas Company. We laid in this yard 195 feet of siding and then extended the main line known as our Second street main line about 250 feet. No part of these tracks are available for the business of the Anheuser-Busch Brewery. Since entering the employ of the Manufacturers Railway we have constructed 11,590 feet of new track, no part of which could be of any use to the Anheuser-Busch Brewery.

In addition to the work already accomplished, we are preparing plans for further extensions to submit to the Board of Public Improvements of the City of St. Louis for their examination and
547 approval. The general nature of that work for which we are now preparing plans is all for general business, team tracks principally and yard tracks, and I have instructions to proceed with those plans and carry them out as soon as we receive authority from the city officials. I am also preparing plans for the southwestern extension. All of this work is in progress in the office. We have made all the surveys and maps. Of late we have been busy putting in yards around the city. During the last month we have not been able to do much of anything on account of the weather, but we are proceeding as expeditiously as we can to carry out the policy of extensions.

Cross-examination by Mr. Colston:

The extension from Second and Utah streets toward Potomac street is 1,182 feet. We have constructed a connection with the Wiggins Ferry in our river yard for transfer tracks. This new construction consisted of 1,162 feet, but in the river yard we have constructed about 3,500 feet of new track. The yard tracks are used for classifying cars that we handle, and, of course, the transfer tracks are for receiving freight from the St. Louis Transfer Railway Company.

I suppose there are cars of beer handled in the river yard and on the transfer tracks. Most of the stuff on the transfer track is inbound, practically all of it. I suppose some empty beer cases are handled on those tracks. I do not keep up with the run of the cars.

No, I was not in error when I stated that none of this new mileage which had been built, had been built to accommodate the business of the brewery company, because before that there were plenty of tracks for the brewery. These new tracks were built for increased business and general industries. These tracks do accommodate business of the brewery and handle more for the brewery company than any other one customer.

548 I said these additional tracks were not put in for any brewery purpose and were not used for brewery purposes.

I do not know how my salary as engineer of the Manufacturers

Railway Company is divided as between operating expenses, additions and betterments and capital account. All I do is to get it and spend it.

At the extreme northern end of our Second street line there was an old street car line, but it was not utilized in the extension of our Second street line. There was nothing there but a depression in the cobblestone pavement to show for it except some old ties we took up from below the pavement. We laid the track on Second street in conformity to the grade of the street. We have no heavy grades on that part of Second street. The relative elevations of our Second street line and the Iron Mountain tracks vary. Our Thirteenth street yards are approximately a little over 100 feet above the Iron Mountain. They are our highest tracks. Our postoffice yard is probably 45 or 50 feet above the Iron Mountain, and our Second street yard probably 25 or 30 feet. The Second street yard is about 26 feet below Broadway and Pestalozzi street, and the postoffice yard is practically at the street level.

It is a fact there are no doors in the Laclede Gas Company's plant along our track, but I do not think that the windows by those tracks are barred. I do not think they have completed their arrangements for unloading coal there. I understood from them they were to unload coal at that point, and the tracks were adjusted so that they could unload coal into their boiler rooms. I do not know that they have been arranged. I called up the engineer some two or three weeks ago and he had had some delay in cutting the walls out and getting the stokers in. I think the Laclede Gas Works are
549 served by the Iron Mountain. The line we extended on the north end of our Second street line runs up to about the Iron Mountain track.

Examiner Mackley: How much did you figure on the cost of these extensions?

Mr. Finley: Well, I will have to get some figures. Putting down that two miles of track probably cost between $40,000 and $50,000, that is, from the bottom of the ballast to the top of the rail. Of course, there are very many other costs to be added, tearing up the paving and repaving, changing gas pipes, sewers, electric light poles and any kind of poles along the street, and gas mains and anything that we may come in contact with. Of course all that is additional expense and I have not figured it.

THOMAS E. BYRNES testified:

I am employed in the operating department of the Bickett Coal & Coke Company. In times past we have sold coal to the Anheuser-Busch Brewing Association, none for a year. For 28 years I was in railroad service. I was with the Rock Island road 11 years in the train and switching service, with the Illinois Central as local freight agent and car distributor, with the Bellington & Beaver Creek as general superintendent, with the Missouri Pacific as inspector and superintendent of transportation. I was with the Missouri Pacific three years. This included service over the Iron Mountain. As

superintendent of transportation I had charge of the operation of the Manufacturers Railway by the Iron Mountain Railway under lease.

I am familiar with the method under which the Manufacturers Railway was operated under lease by the Iron Mountain. Having charge of the distribution of power and cars, it was my duty
550 to know that the Manufacturers Railway had sufficient power and not too much power. Incidentally I had supervision of what was paid out for actual operating cost, that is to say, the prepared figures had to be submitted to me for attention to know that we were operating economically. The actual experience in operating over the rails of the Manufacturers Railway did not come under my personal supervision. The superintendent of terminals had immediate supervision, but the result of his work had to come through my office, so that the actual result as to the cost of operation did come to my notice in the regular course of business every day.

It was my experience that the cost of maintenance of equipment over the Manufacturers Railway was high for the reason of the grades and curves. We had not a yard or a railroad or an extension similar to the Manufacturers Railway at any point on the whole Missouri Pacific system. We had to operate some 4½ per cent grades. We had to equip two engines with left-handed throttles especially for that work, and they would wear out oftener than the others. It was understood by all concerned that the engine assigned to that particular zone would be shopped oftener than the others. This was necessary on account of the heavy grades and short work and on account of the switches and curves. All of its tracks are pocket tracks. I should say out of the cluster there must be 75 per cent which are known as pocket tracks. Such a proportion of pocket tracks increases the cost of operating and increases the cost of the switching service, because they cannot do as much work there as they did in the classifying yard or in a long yard.

My experience gave me facts as a basis on which I can make
551 comparisons of operating costs over the Manufacturers Railway and operating costs elsewhere. We had a statement at the time, I guess it must certainly be in use over there, showing the cost per car of handling cars in every yard. This statement came under my notice so that I became familiar with the results of operation with other terminal movements and switching service. The statement was partially prepared at my office.

Mr. Kirby: I show you Complainant's Exhibit No. 1, filed in this case, showing as the cost of operating expense per car $2.44. Will you look at that and look at the items shown in Exhibit No. 1 as entering into that total, and that average cost per car, and then tell us whether in your opinion the operation of the Manufacturers Railway Company at that cost per car is economical and reasonable?

Mr. Byrnes: $2.44, I would say yes, it is economical.

Mr. Kirby: What would you say then as to whether or not it indicates any excessive expense? I mean in management which is not economical, any unnecessary expenditure in any way entering into that cost of operation?

Mr. Byrnes: That is cheaper than the cars were ever switched when I was on the work.

Mr. Kirby: Now, did you at any time prior to your service for the Missouri Pacific and Iron Mountain, in the days you have stated, visit other terminals and inspect them?

Mr. Byrnes: Yes, sir; that was my first duty over there as inspector of transportation to do that thing.

Mr. Kirby: What did you do—what terminals did you visit; how extensive was your observation of operating conditions in other terminals?

Mr. Byrnes: I started in at Omaha and left off at Natchez.
552 I visited every yard in the Mississippi Valley on both sides of the river until I got through with the work.

Mr. Kirby: For whom did you do that investigating?

Mr. Byrnes: For the Missouri Pacific.

Mr. Kirby: And that included the Iron Mountain System?

Mr. Byrnes: Yes.

Mr. Kirby: And it is based on the information which you have acquired in that yard, as well as your own experience with the Iron Mountain, that you have given your opinion here as to the reasonableness or unreasonableness of the operating cost as incurred by the Manufacturers Railway?

Mr. Byrnes: Yes.

Mr. Kirby: Do salaries of trainmen and engineers average any greater now than when you were operating?

Mr. Byrnes: I think so. I think the standard scale has been raised about 20 per cent since then.

Cross-examination, by Mr. Colston:

Where a railroad company does both a line business and a terminal business I think the cost of doing terminal or switching business at any point could be analyzed, but it is usually thought to be more expensive than it is worth. I think it could be analyzed separately, that is to say, the cost that entered into the cost of switching the car could probably be analyzed. My entire investigations have been in connection with the naked operation. I have not investigated top cost.

The engines that I operated for the Manufacturers Railwey were shopped about every nine months. Out of the five engines we had one of them was in the shop, I should say, half the time. We put some new engines there after I came. I don't know whether
553 they were scrapped after they were retired from service. I was in charge of that work three years. At the time I took hold of the work I believe the engines were ten years old. The zone to which I referred in which these engines received such hard service is down on Second street. The engines were on hill work. I don't know what yard they call it. It is the key track yard south and run from Dorcas to Arsenal immediately east of Broadway. My recollection is that at that time we handled about 30,000 cars a year on that particular piece of track. It would have materially increased our expenses to have increased the number to 50,000. I agree with

him (Mr. Moore) that on the Second street line as it now exists north of Lynch street, having now an average traffic of say six to ten cars per day, that he could double that without materially increasing the cost. I also agree with him that one switch movement cost about the same as another. It is a generally recognized principle that it costs about as much to switch a car three miles as four miles, regardless of all accounting features.

(Examiner Mackley: Let the record show that the hearing has been adjourned until further call.)

Abstract of Evidence.

(Hearing of September 25, 1912.)

Appearances.
Index of witnesses.
Index of exhibits.
Opening statements for Examiner, complainants and defendants.

554 *Evidence.*

G. F. Moore testified:

I am president of the Manufacturers Railway Company and have testified before in this case. Since the hearing of this case in January, 1912, I have prepared certain data showing our experience in the operation of the Manufacturers Railway Company for a certain portion of this year 1912, so that the Commission may have the benefit of the result of that operation as well as the results covered by my testimony heretofore given relating to earlier periods.

I have prepared a trial balance after closing the books of the Manufacturers Railway as of the year ending June 30, 1912, which I have before me. (Trial balance offered and introduced in evidence as Complainant's Exhibit No. 48.) I have also prepared a statement showing our comparative operating expense during June 30, 1912. (This statement offered and introduced in evidence as Complainant's Exhibit No. 49.) Without reference to Exhibit No. 48, Exhibit No. 49 shows the operating expense for the fiscal year ending June 30, 1912, to be $168,279.45 as against $151,448.98 for the same period ending June 30, 1911, an increase of approximately $17,000. Referring to the same exhibit, the gross operating revenue as of June 30, 1912, was $241,937.73 as against $234,047.72 for the corresponding period ending June 30, 1911, an increase of approximately $7,000. The exhibits show that the operating ratio has increased. It has been the tendency of our operating ratio to increase since the development of the business of the road, particularly with the development of miscellaneous business; that is to say, our operating ratio has increased as the volume of traffic has increased. It is impossible for me to say when that increase will strike a dead level. That is a mere matter of speculation, but so far the
555 trend has been a constant increase. This operating ratio will continue to increase until we are able to operate the northern

and southern zones to their capacity as we now operate the middle zone. In trying to forecast the future of the development of traffic handled by our road, the fact of a constantly increasing operating ratio is a material factor to be taken into consideration in determining what will be a reasonable maximum rate to be made for the service rendered.

I have also prepared a supplemental statement and summary of shipments received and forwarded by zones covering the period from January 1, 1912, to August 31, 1912. (This statement offered and introduced in evidence as Complainant's Exhibit No. 50.) All of these statements (Exhibits 48, 49 and 50) are correct statements as shown by the books and records of the Manufacturers Railway Company covering the subject-matter which they purport to disclose and are correct. In the previous record there were statements of shipments received and forwarded by zones (Exhibits Nos. 45 and 46) and this Exhibit No. 50 follows the same zone division that was adopted in those previous exhibits, so that this statement (Exhibit No. 50) is merely supplementary to those previous exhibits and continues the data for the purpose of carrying forward the picture presented by them to cover a later period of time.

Taking Exhibit No. 50, I desire to direct attention to the growth of business other than that which may or may not be controlled by the Anheuser-Busch Brewing Association. It was pointed out in the preliminary decision that all shipments received in their name and forwarded by them cannot be considered as their shipments, but I desire to show the increased number of cars handled for peo-
556 ple and for firms in which the Anheuser-Busch or its constituent stockholders have no interest whatever.

Now, taking page 1 of this exhibit—it shows the total business, both in and out, handled during that period for the southern zone, total 3,216 cars, of which 2,311 were inbound and 905 outbound; in the southern zone 364 cars inbound, 78 cars outbound; a total of 442 cars. The figures given here for the northern and southern zones do not include any service rendered for the Anheuser-Busch Brewing Association or any of its affiliated branches. This was the condition in the previous record, and that condition still prevails; so that all the service rendered by the Manufacturers Railway Company during the period covered by this Exhibit No. 50 is included within this statement of the middle zone, regardless of whether that business is handled for the Anheuser-Busch Brewing Association itself or whether for any other industry.

In this middle zone the total number of cars interchanged was 33,272, of which 15,045 were inbound and 18,227 outbound. The classification of miscellaneous here shown, of which 2 were inbound and 14 outbound, a total of 16 cars handled, are principally cars that are consigned to or from some shipper who would probably never come back and is not listed by name for that reason. They were not regular shippers.

Examiner Mackley: Why is it, Mr. Moore, that in the northern and southern zones there is so much more received than there is

shipped out, while in the middle zone the outbound shipments predominate?

Mr. Moore: The southern zone is largely composed of shipments that are disposed of in St. Louis.

Examiner Mackley: Is it manufactured into anything or
557 is it the finished product that is shipped in and sold?

Mr. Moore: As I look at it here, most of it is lumber. It is used for building purposes; 150 cars were for the construction of the Diesel Engine Plant.

Examiner Mackley: Those zones do not ship in much more raw material to be manufactured into the product and then shipped out again from the same plant?

Mr. Moore: About the only shipments out is a few cars of lumber, and occasionally a rejected car and some fertilizer from the packing company.

Mr. Kirby: You are now speaking of the southern zone, are you not?

Mr. Moore: The southern zone.

Mr. Kirby: Now you have not yet answered the Examiner's question so far as it affects the northern zone.

Examiner Mackley: There were 2,311 cars received and 905 shipped out.

Mr. Moore: I did not understand you—I will answer that. The N. K. Fairbanks Company receiving 353 cars, only forwarded 40, and the reason of that is that their warehouses for forwarding their freight are located on the Iron Mountain tracks that serve them and what they forward by way of the Manufacturers Railway ordinarily must be teamed. The Lumber Company uses the greater quantity of their lumber here in St. Louis and have received 606 cars and forwarded only 194.

Mr. Kirby: And they make their St. Louis deliveries by wagon, do they not?

Mr. Moore: By wagons. The Independent Coal and Supply Company probably only forwarded rejected cars and they received 246 carloads.

Examiner Mackley: Does the Fairbanks Company receive any inbound freight from any other line than the Manufacturers Railway?

558 Mr. Moore: They receive probably more by way of the Iron Mountain than they do by way of the Manufacturers Railway, and the Laclede Gas Company ships both ways about equally.

Mr. Kirby: Now won't you look at the Pauly Jail Company and tell us about that—their outbound business is larger than the inbound?

Mr. Moore: The Pauly Jail Company received 43 inbound and forwarded 103, because their inbound is very heavy and compact and their outbound in the way of cages takes up more room. Therefore their outbound exceeds their inbound.

Mr. Kirby: Their inbound is their raw material and their outbound is their manufactured product?

Mr. Moore: Jail cells.

We are having new shippers almost every day. The only way to get at their number would be to check back against the other statement. We have, however, I might add, with your permission, located two additional spur tracks since the last hearing in the northern zone, making two located patrons out of firms which at one time were using our team tracks presumably in common with some other team tracks that they might use in that end of town—that is, the Heibel Box Company and the Weber Drayage Company. The Heibel Company shipped 87 cars. It is a new industry, but previous to this they had used our team tracks at different places and they now have their own siding for all our line.

At the first hearing in this case Mr. Pauly of the Pauly Jail Building Company in substance said that he was not then shipping over the Manufacturers Railway but did all of his shipping over the Iron Mountain, but was ready to ship over the Manufacturers Railway if the facilities were afforded. We have constructed what
559 is known as the Trudeau team tracks, which serve him more efficiently than any other tracks, and since they have been completed he has, I believe, given us about all of his business in and out, 146 cars. The Laclede Gas Company shipped 257 cars; that is, 150 in and 107 out. This was new business and is the result of the completion of a track which I believe was hardly completed at the hearing in January. Over this track they receive their fuel coal and load out their by-products. Our business in the northern zone has grown very materially during this eight-months' period, and the growth in this business is materially in excess of the percentage of the growth of the Anheuser-Busch business, and this is speaking simply with reference to the northern zone.

We have recently handled through the Park avenue yards, possibly not since the last hearing, all of the architectural steel that is used in the Railway Exchange Building, that being the only railway yard in the City of St. Louis where they could get track facilities and storage facilities to handle that class of business, totaling upward of 400 cars. This yard has been steadily drawing miscellaneous from people who are located in that neighborhood. The last page of this exhibit discloses a very substantial increase in miscellaneous business done in the southern zone, probably a decrease in the business of the Ganahl-Fidel Lumber Company, but which has been amply made up by the Diesel Engine Company and the Belz Provision Company. I think the Belz Provision Company, which shipped 49 cars, 40 in and 9 out, is a new shipper in the southern zone. For them I have constructed a spur which we call our Zepp street spur, and have arranged to build a small stock
560 pen to accommodate their live stock. The pen is not yet built, but will be within a few weeks. The track just mentioned and also the location of the Diesel Engine Company's private tracks for their own use and for which they have paid is at the foot of Second and Utah streets, where formerly the main line of what was then known as the southwestern extension of the Manu-

facturers Railway was located. This Diesel Engine business in the southern zone, of 150 cars in and 1 out, is inbound material for the construction of that plant. This plant is a very large plant that will cover seven acres and will be a very extensive and expensive plant, and will produce a large volume of both in and outbound tonnage served by the Manufacturers Railway. The plant is being constructed at a cost of between $500,000 and $600,000, and it is reasonable to suppose that when this plant is completed the Manufacturers Railway will receive a good business from that plant.

Now turning to Exhibit 50, the middle zone, the zone in which all of the business is done for the Anheuser-Busch Brewing Association, as well as for other shippers, shows that the business for other industries than that known as the Anheuser-Busch Brewing Association has increased very materially. In this zone we received 15,045 cars, forwarded 18,227 cars, a total of 33,272 loaded cars. Of this total 27,754 were either shipped from or to the Anheuser-Busch Brewing Association, this being about 83 per cent of the total business of the middle zone. Combining the entire eight months' business in all zones, the percentage billed to and from Anheuser-Busch Brewing Association is less than 75 per cent of the entire tonnage handled on a carload basis. On a tonnage basis, the percentage would favor the miscellaneous business rather than the Anheuser-Busch business.

561 The growth of the miscellaneous business is much more rapid and the percentage of growth much greater than the growth of the Anheuser-Busch Brewing Association's business, although that has shown a steady normal increase since I have been in St. Louis.

The middle zone statement as shown in Exhibit 50 shows that we handled for other breweries which are competitive with Anheuser-Busch Brewing Association as follows: The American Brewing Company 987 cars, of which 487 were inbound and 500 outbound. For the Green Tree Brewing Company 279 cars in and 321 cars out, a total of 600 cars. For the Obert Brewing Company 215 cars in and 301 cars out, a total of 516 cars. For the Union Brewing Company 75 cars in and 1 car out, a total of 76 cars. For the Columbia Brewing Company 1 car out. The nature of this other brewery business and the method in which it is handled was described and illustrated by illustrative freight bills which were introduced at our last hearing (January).

I have not made a comparative statement with respect to our middle zone business, but offhand I would say that it has increased during this eight months' period, and it is also true that our business for other breweries has increased during that period. These other breweries are receiving more and more business and are still using our facilities. I think we have handled all of their business for some little time. In our middle zone we have reconstructed our handling yard at First street and constructed some additional trackage at Second and Dorcas, also additional trackage between Twelfth and Eleventh streets south of Lynch street for the purpose of increasing our ability to handle the business that is offered and to

encourage future business. These improvements operate for the benefit of all shippers on the Manufacturers Railway.

The Anheuser-Busch Brewing Association receives in pro-
562 portion to their business the legitimate advantages and no more.

I have a printed pamphlet entitled "Report of Special Committee of the Business Men's League," subject "Railway Rates and Terminal Conditions in St. Louis," which refers to proceedings of an Executive Committee of the Business Men's League October 25, 1911, which I received some time after our second hearing. It was mailed to me as a member of the Business Men's League as soon as it was ready for distribution. The nature of the Business Men's League of St. Louis is that of a business organization, as was testified to by Mr. Coyle at our last hearing. This pamphlet purports to be a report of a special committee of the Business Men's League consisting of Robert H. Whitelaw, chairman, Homer P. Knapp, Charles A. Stix, Robert H. Stockton and George W. Simmons, as a committee. Mr. Whitelaw testified in the first record in this case. He is a well known business man and shipper in St. Louis and a terminal expert as well. Mr. Homer P. Knapp is vice president and general manager of Butler Brothers' branch in St. Louis, a very large shipping concern. Mr. Charles A. Stix is one of the chief officers of the Grand Leader, one of the largest department stores of St. Louis, and a well known business man. Mr. Stockton I do not know. Mr. George W. Simmons is the vice president and general manager of the Simmons Hardware Company of St. Louis, one of the largest shippers in St. Louis. Page 9 of that pamphlet reads as follows:

"Second. It will afford to all members of the Terminal Railroad Association the right to use the terminals of the Manufacturers Railway. The importance of this is shown by the fact that the Manufacturers Railway Company obtained from the municipal authorities a franchise as covered by Ordinance 22025, approved
563 April 8, 1905, and Ordinance 22996, approved April 1, 1907, to extend its terminals in general and also to connect with an incline in the vicinity of Dorcas street, to be operated in connection with the Car Ferry Transfer Company, together with a belt line on the east side not less than seven miles in length. Obviously this extension of terminals, available to all railroads under the terms of the decree, will be of great benefit to the shipping interests of St. Louis, and particularly South St. Louis."

(Pamphlet offered and introduced in evidence as complainant's Exhibit No. 51.)

I have prepared from the records of the Manufacturers Railway Company a statement showing the amounts of reclaims charged against trunk lines on cars loaded and unloaded on the Manufacturers Railway Company's rails and the amount of per diem credited to the same trunk lines for their equipment. (This statement offered and introduced in evidence as Complainant's Exhibit No. 52.) This statement is drawn from our account with the St.

Louis Terminals as kept in our foreign road ledger, and shows the amount of per diem earned by equipment that we receive from them and the amount of reclaim on a basis of four and one-half days that the Manufacturers Railway would be entitled to. There are four roads, the account appearing in this statement, four not operating with the Manufacturers Railway on this plan, but their earnings have been set up in our book and our reclaims against them have been set up pending a settlement which will come sooner or later. The four roads are the B. & O.-Southwestern Railway, the Cleveland, Cincinnati, Chicago and St. Louis Railway, the Louisville and Nashville Railroad, and the Vandalia Railway.

I have previously testified that the Manufacturers Rail-
564 way, under whatever car service arrangement then existed, had to pay more car service than it was able to collect, under the conditions that prevailed prior to December 1, 1911, when the Manufacturers Railway was treated by the Terminal Railroad Association as a shipper instead of a common carrier, putting them on the same basis as an individual receiving or delivering a carload of freight on a team track instead of allowing them to work on an equitable arrangement similar to or in fact working under the per diem rule agreement. This Exhibit No. 52 shows the result of our operating under the per diem rules plan in comparison with that previous result. It furnishes a basis and shows that by this method of operation I am enabled to extend to the shippers of the Manufacturers Railway the average car service agreement, which lessens the burden of car service on the individual shippers on the Manufacturers Railway without increasing to any very great extent the cost of equipment to the Manufacturers Railway. Incidentaly it allows the railway and the shippers to break about even.

While we only ask for and receive four and one-half days' reclaim and the other terminal delivering lines in St. Louis receive six, on this basis of four and one-half days' reclaim we are able to operate without it costing anything to handle that equipment and at the same time without costing the shipper as much to handle his business. This important condition is due to the co-operation of the roads working with me on the per diem rule agreement and to the fact that we operate so much equipment that is not eligible to per diem, which costs the railroad nothing, that is, private car equipment such as the St. Louis Refrigerator Car Company and the American Refrigerator Transit Company. Each of these lines
565 allows the Manufacturers Railway to use their equipment without any additional charge for mileage or per diem on a basis of yarding them when this equipment is not in the service of the owners. The American Refrigerator Transit Company is controlled by the Gould lines. The nature of the ownership of the St. Louis Refrigerator Car Company's cars, not only as to the stock ownership of the private car line itself, but the ownership and operator of those cars and the relation of those cars to the Manufacturers Railway is already shown in this record.

The capital stock of the Manufacturers Railway Company has been increased since the last hearing. I offer in evidence a statement

of increase in capital stock of the Manufacturers Railway Company April 30, 1912, showing an increase from $250,000 to $1,000,000. (This statement offered and introduced in evidence as Complainant's Exhibit No. 53.) This statement, or a copy of it, showing the increase in capital stock, was filed in the office of the Secretary of State of Missouri, and I have received a certificate therefor. It is also a fact that the increased stock has been largely issued. All of it has been issued except 420 shares, which are held subject to the conditions under which the increase was made, and if it is not subscribed for, Mr. Adolphus Busch will take it at par, so that all of the difference in capital stock between the amount which the record previously shows as authorized and issued and the total sum of $1,000,000 has been issued except these 420 shares, $42,000. Before the end of this calendar year the 420 shares will be issued.

As to all that stock which has been issued since the last hearing, no new individuals have become stockholders in the Manufacturers Railway, but the personnel of its stockholders remains the same, with Adolphus Busch holding by far the greater proportion of its stock, including this increased stock. Mr. Adolphus Busch paid for his portion of this increased stock by crediting the amount at par upon the debt which the Manufacturers Railway Company owed him for money loaned to the Railway Company. He converted his claim for money advanced to the Manufacturers Railway Company into this increased stock of the Railway at par. But the situation which the record formerly disclosed as to his being the largest and the controlling stockholder, and as to the identity and number of the other stockholders, has not been changed. They are still the same persons and are still minority holders.

566

I have prepared a statement showing the distances over which the various movements of cars travel in our actual handling of the business of the Manufacturers Railway in the three different zones. (This statement offered and introduced in evidence as Complainant's Exhibit No. 54.) The purpose of this statement is to show the distance a car moves from or to the furthermost and the nearest point in this zone, to or from the Wiggins Ferry (Terminal Railroad) or the Iron Mountain, and the summary on the last page gives the result. In order to connect this statement up with the previous record I will state that we have three interchange track connections with the Iron Mountain between Arsenal and Dorcas streets on First street, two interchange connections with the Terminal Railroad west of our viaduct, north of Dorcas and south of St. George street, one interchange with the Terminal Railroad on the levee near Barton, and an additional connection with the Iron Mountain at Barton and Second streets.

The intrechange at Barton and the levee is used principally by the Manufacturers Railway Company for interchange business. The total on sheet 1 of Exhibit 54 refers to cars delivered to the Iron Mountain in the First street yard. The total on sheet 2 refers to deliveries to the Iron Mountain at the Bar-

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ton street connection, this being at a point across our viaduct on the river front at the foot of Barton street. Sheet 3 refers to deliveries to the Wiggins Ferry Company at a point across our viaduct and on the levee between Barton and Lesperance streets. This connection is the farthest away from all yards. This Exhibit was compiled from actual measurements of the distances covered in the actual movement of cars as indicated by the totals on these various sheets, so that the Commission has an exact statement of the length of movement required in order to do every kind of our interchange business.

The total average car movement for all zones to all connections, including the return of empties, which is the average car mileage of all cars handled, is 3.12 miles. The greatest part of all interchange business handled for the Anheuser-Busch Brewing Association goes to the top of the hill, that is, as far west as Ninth street, and is handled over the heavy grades, that is, all of the inbound freight except such coal as is used at the ice plant at Second street. The rice and hops go at least as far west as Thirteenth street. A great deal of the coal used by the brewery goes west of Ninth street. The coal for one big power plant at the ice house stops at Second street, but the bulk of the inbound tonnage for Anheuser-Busch goes west of Broadway and is delivered between Broadway and Thirteenth street.

All of the interchange or plant facility service which we render the Anheuser-Busch Brewing Association, that is, the moving
568 of rice from their rice house to their brew house, is charged direct to the Anheuser-Busch Brewing Association at $1 a car. It pays the bill and this charge has nothing whatever to do with the through St. Louis rate. It is a plant facility service. If the interchange business which we handle for the Anheuser-Busch Brewing Association was of the same volume as the other business handled, it would then be our most expensive movement, but handling it in a great volume as we do, it would not be so much per car unit as the service we render on Second street.

It develops that we burned about 1,000 pounds more coal a day in our locomotives than the Terminal Railroad consumed when using the same grade of coal from the same mine for a day's work. This shows that we were forced to exert ourselves a little more in performing our service. Our North Second street line has no grades that are troublesome. Our difficulty, so far as the physical track formation is concerned, is located almost entirely in the middle and southern zones. It would be more expensive to handle a single car for the Obert brewery in the middle zone than it would be to handle a single car on Second street, but it must always be understood that Obert's business is not the only business we handle in our Eleventh and Thirteenth street yards. We have a large volume of business in these yards from other people, which reduces the average cost per car. Because of the difference in volume of traffic it costs me more to handle a car on Second street now than it does to handle a car in that difficult operating zone (middle zone.) But I hope,

through the development of the volume of business in the northern zone, to change the cost per car.

This Exhibit No. 54 shows merely the maximum dis-
569 tance and minimum distance and the average is determined by dividing the sum of the two by 2. The heavier part of the business in the northern zone originates at the extreme end with the Laclede Gas Company, with the N. K. Fairbanks Company and at the Park avenue yard. Very little of the business is at the Louisa street end. Most of the Second street business gets the maximum haul, I should say from 80 to 85 per cent of it.

The point of interchange nearest to the brewing plant or bottling plant of the Anheuser-Busch Brewing Association is the interchange with the Iron Mountain on First street between Dorcas and Arsenal streets. That was the first point of interchange between the rails of the Manufacturers Railway and the Iron Mountain system, and for a great many years it was the only point of interchange, and it was the only point of interchange until Mr. Busch started on his plan to develop a terminal system and built the viaduct, and then his connection with Wiggins. This original interchange was located about half way between Arsenal street and Dorcas street, just east of the west line of First street. The present arrangement shows an interchange just south of Dorcas and north of Arsenal street, and another one on the east line of First street just south of Arsenal street. This track connection has been altogether modified by this summer's reconstruction. (The witness was here referring to copy of map heretofore introduced, being an exhibit without number, but one furnished the Commission after the hearing of May, 1910.)

We have reconstructed the First street yard to its maximum capacity. We have expended in the reconstruction of that yard about $800,000. This reconstruction altered the tracks by which
570 we reach independent shippers in that block. Two of our large independent shippers, namely, The St. Louis Cooperage Company and the St. Louis Basket and Box Company, located on the north line of Arsenal street, were formerly served by a switch connection with the Iron Mountain and operated by us under a trackage arrangement with the Iron Mountain, but this spring we disconnected the switch from the Iron Mountain, throwing it into our own track, and extending it through to Second street, the main line of the Manufacturers Railway, and also put in additional trackage for their use for loading out their finished product. This track was put in just east of Second street and between the plants of the St. Louis Basket and Box Company and the large ice house operated by the Anheuser-Busch Brewing Association. We have also arranged additional trackage to serve that ice house, which has forwarded a maximum of 32 carloads a day this summer. This ice house is located on Second street about 200 feet or 150 feet north of Arsenal street. The St. Louis Basket and Box Company is indicated on the map as No. 24, and the St. Louis Cooperage Company as No. 28. These two companies occupy all of that parallelogram between First street and Second street north of Arsenal for a distance of about 150 or 200 feet.

Our recent improvement work in the First street yard, and by the First street yard I mean all the space not occupied by those two industries, and by the ice plant, has improved this yard to its fullest possible capacity for the handling of railway business and for the interchange of freight with the Iron Mountain Railway, which is one of the principal things we do in that yard. We have developed that yard to its utmost margin of utility.

571 The last point of interchange of which I spoke, being the interchange with the Iron Mountain at a point almost in Arsenal street extending northeasterly from there to the river front, is an emergency interchange with the Iron Mountain, being a full set of cross-overs leading from their most easterly to their most westerly track. Just north of it is our log track, the little spur that runs directly toward the river, and between circle Nos. 151 and 19. On this little spur the St. Louis Basket & Box Company unload the logs that come to them for use at their South St. Louis factory. We also use it in emergency to get in and out of the lower end of the yard. The Iron Mountain make free to use our tracks when they shift and we use their track when we shift without formal agreement. However, we do not use it to any great extent for the interchange business so long as this First Street yard near circle 75 is capable of handling it, because it crosses their main line and we do not like to do that only in emergency. This First street yard is what we call our making-up and breaking-up yard for industrial trains.

Another point of interchange with the Iron Mountain is near the foot of our First street yard and a little north of Arsenal street on the west side of the main track of the Iron Mountain. This is the principal point of such interchange business as is done at the foot of our First street yard. It is now a ladder track that they come in on, and these other tracks lead off from that ladder track, and among these tracks is the main Dorcas street line. The ladder track terminates in the Dorcas street line that leads over to Second street, and along that particular line all business for the north and south zones must be handled because it is the only way to get on to Second street from these yards, so that this point of interchange is a

572 fixed factor for our north Second street line, and we must have it to use.

Based on my experience in handling interchange business through the First street yard and the points of interchange which I have referred to at that place with the Iron Mountain, I would say that the average maximum capacity would not exceed 40 cars a day through this First street yard interchange. Through this same yard we have to do the industrial switching for the Basket and Box Company, the Cooperage Company, the ice house, the rice and hops for the Purina Mills, also the yarding of loads that are taken out during the day and held for delivery to connecting lines on the other side. It is a very important yard and has served almost every purpose for which any yard can serve a railway. We are now averaging about 60 cars a day I think for interests other than Anheuser-Busch, and if we added 25 per cent for empties, it would be 75 cars, so that

this First street yard would not accommodate much more than half of the so-called miscellaneous or outside business.

If we attempted to handle only the miscellaneous or outside business through the First street yard, our road would be congested in one day, and this is not taking into consideration the enormous tonnage which we handle for the Anheuser-Busch Brewing Association. On an average we interchange about 225 or 230 loaded and empty cars a day and of course that would be much more than we could possibly handle through this First street yard. The more economical way of handling our interchange would be to make all deliveries to the Wiggins Ferry between Barton and Lesperance streets, and in turn allow them to deliver to the Iron Mountain such cars as would go over the Iron Mountain. From our point of view
573 that would be the more economical way of handling. It is very much more convenient and economical for the Iron Mountain to do such interchange business as we do with them at First street because the Iron Mountain is continually working switch engines between Crandall and Lesperance street yards. These engines stop a number of times a day, and either switch in or take out the cars for the Manufacturers Railway. It would save them the expense of paying the Terminal Railroad for their intermediate switch as between the Manufacturers Railway and the Iron Mountain at Lesperance, so that it would not only save the Iron Mountain so much on every car in switching paid out, but it would also be convenient because the engine which is moving the loads collected from the south side picks them up, takes them all together to Lesperance street, and thus expedites business, so that in dollars and cents our interchange with the Iron Mountain at the First street yard operates to their economy and advantage rather than to that of the Manufacturers Railway.

The improvements we have made in the First street yard have extended the utility of this yard as much as possible, so that the maximum capacity for the interchange of business in this yard is now a fixed factor. As it is now impossible to handle all of our business through this First street yard, it will be the more impossible to handle all of our business through this First street yard as the business increases, and the proportion of our total business which we will be able to handle through this First street yard will grow less and less as our volume of business increases.

The Anheuser-Busch Brewing Association competes in the St. Louis market with ice as well as with beer. It ships con-
574 siderable quantities of ice, both local and interstate. They have one ice plant west of Ninth street in the Ninth street brewery yard, and a big ice plant on Second street. All of the shipping is done from the large new ice plant which is on Second street, and only emergency cars are loaded at the plant located on Ninth street.

The Polar Wave Ice Company is located in another part of St. Louis, having a large plant at Newstead avenue on the tracks of the Wabash. This plant is a competitor in ice trade with the Anheuser-Busch Brewing Association, and the practice of the St. Louis rail-

ways is to absorb the switching at this plant into the St. Louis rate, so that in respect to the ice business which the Anheuser-Busch Brewing Association handles, as well as in respect to its beer business, it has to meet competitive conditions so far as they are affected by the absorption of switching charges made for its competitors in other parts of St. Louis.

Our Second street yard, being the fan-shaped yard shown on this map to which I have been referring, and lying south of our Pestalozzi main line and west of Second street, is a very important adjunct to the making up of our trains. The business coming from the post-office yard and all the yards west of Broadway is congregated there on what we call our Wall tracks, and the trains for both the Iron Mountain and the Terminal Railroad are largely made up in that Second street yard on the two or three most northerly tracks. We handle interchange business in this yard for the breweries located in the middle zone other than the Anheuser-Busch. About 17 per cent of the business there handled is for breweries other than Anheuser-Busch.

575 At the last hearing something was said with respect to the plans of the Manufacturers Railway Company for building a freight station in South St. Louis. We have wrecked all but the Broadway frontage of the buildings that stood at that time on the property. The architects are working on the plans and are sending out investigators to ascertain as to the most modern and efficient building of that kind. It is our intention to construct this building. We are planning for it and I am sure that it will be constructed. This will be a freight station, as described in my previous testimony.

My testimony at the least hearing (January) was that since the first hearing we had established a new delivery yard south of Pestalozzi street and just west of Broadway. That yard appears in the former record as the Stecher yard, but it has been more than doubled in capacity, has been extended, and is now being used as a general loading and unloading track quite extensively. I have two photographs taken of this yard two or three days ago, that is Monday, September 23rd.

(These protographs offered and introduced in evidence as Complainant's Exhibits No. 55 and No. 56.)

These two photographs (Exhibits 55 and 56) show a number of cars standing in that yard. All of those cars are either being loaded out or unloaded by the American Brewing Company, one of the competitors of the Anheuser-Busch Brewing Association located in the middle zone.

I have another photograph here, this is a photograph of the south end of our river yard showing a part of the interchange track with the Wiggins Ferry or Terminal Railroad Association. This photograph is looking north, that is, taken at the south end of the

576 river yard and looking north toward the Barton street delivery.

(This protograph offered and introduced in evidence as Complainant's Exhibit No. 57.)

I have another photograph which shows practically the same section of tracks except that the view includes the log yard just south of where the other picture begins.

(This protograph offered and introduced in evidence as Complainant's Exhibit No. 58.)

It also shows the work that is now going on for the erection of our engine house and machine shop. It is looking north the same as the other photograph. The logs that were shown in this Exhibit No. 58 are those to which I have referred as being handled by us for the St. Louis Basket and Box Company and delivered on the river bank.

I have still another photograph that shows practically the same entrance to the same yard, except that it shows a little more of the southern end of that yard. The elevated structure which appears in the background at the left hand side of the photograph is the viaduct crossing over the Iron Mountain and forming the connecting link between the Manufacturers Railway and the Terminal Railroad Association.

(This photograph offered and introduced in evidence as Complainant's Exhibit No. 59.)

We are constructing a ten-stall engine house and machine shop near the southern end of our river yard at a cost of from $110,000 to $120,000, exclusive of the ground value. This work is now under way. Tracks have been laid and the work*ing* is being done.

Examiner Mackley: I want to ask a few questions along one line. How much of this increase in capital stock, Mr. Moore, was
577 represented by the debt of the Manufacturers Railway Company to Mr. Busch?

Mr. Moore: It will not discharge the entire current liability as now appears on our books.

Examiner Mackley: How much was allotted to him on that liability as a part payment of it in this new issue of stock?

Mr. Moore: 193/250ths.

Examiner Mackley: How much would that be in money out of the $750,000 increase?

Mr. Kirby: This is a good deal of mental arithmetic.

Mr. Wright: $579,000.

Mr. Moore: There was $125,000 of that million dollars already issued. That left $875,000 worth of stock to be issued. Of that Mr. Busch got 193/250th. The capitalization is now $1,000,000. It was previously $250,000. Of the $250,000 one-half was issued. Our increase then was $750,000 plus $125,000 unissued treasury stock, or $875,000 to be issued. Of that $875,000 Adolphus Busch has secured 193/250ths. Is not that right?

Mr. Kirby: A little more than that, but that is substantially correct.

Mr. Moore: And a little more of that are people who own stock but will waive their right to subscribe to the new issue.

Examiner Mackley: That would be $579,000?

Mr. Wright: $674,500.

Examiner Mackley: And that would leave out of the $800,000 and odd how much?

Mr. Wright: That would leave $200,500.

Examiner Mackley: To whom was the other $200,000 issued?

Mr. Moore: Well, Mr. August A. Busch, if I remember right, approximately is entitled to 35/250ths. Schuettler estate
578 12/250ths. That would be an additional 47/250ths of $875,000 which would be cleaned up, maybe not quite but almost.

Examiner Mackley: And that would leave how much?

Mr. Moore: Some stock which probably was waived by the present stockholders of record and which Adolphus Busch purchases at par.

Mr. Kirby: Under their waivers or assignments?

Examiner Mackley: I did not quite get that $200,000 that was remaining after Mr. Busch's debt was paid. Then Mr. August A. Busch had how much?

Mr. Moore: He would be entitled to 35/250ths of the $875,000, the Schuettler estate would be entitled to 12/250ths.

Examiner Mackley: That would still leave quite a good deal?

Mr. Kirby: No, very little, Mr. Examiner, just about 3/250ths or 4/250ths, and those stockholders assigned their subscription right to Mr. Adolphus Busch and that is issued to him. The result is, the increase of stock has all of it been issued except about $42,000 which is still unissued, which, if it is not taken, will be taken by Adolphus Busch. All the rest of the increase has been taken either by Adolphus Busch or by his son, August A. Busch, and has been issued to them. So that the net result of this whole issue of increased capital stock is that the relative proportionate holdings of Adolphus Busch have increased, the relative proportionate holdings of his son and all the other stockholders have remained the same, except as they have waived the subscription rights in favor of Adolphus Busch.

Examiner Mackley: So that there has been no additional cash paid in the purchase of this stock?

579 Mr. Moore: No, but it has stopped the paying of interest on current liabilities to the amount of the sale of the stock.

Examiner Mackley: To the amount of Mr. Adolphus Busch's indebtedness?

Mr. Moore: And Mr. August A. Busch. Whatever Mr. Adolphus Busch does not purchase the other people will pay cash for. Adolphus Busch has already paid for his.

Examiner Mackley: In the indebtedness of the Manufacturers Railway Company to him?

Mr. Moore: He loaned actual money to us at 5 per cent which shows in our books as notes.

Examiner Mackley: Which went into the property?

Mr. Moore: Yes, and to help defray the operating expenses while we have been conducting this ligitation.

Examiner Mackley: How about the proportionate amount Mr. August A. Busch got?

Mr. Moore: He pays for that in cash.

Examiner Mackley: Just to have the record clear here, what was the primary object in increasing the stock—to keep from paying interest on this debt due to Mr. Adolphus Busch?

Mr. Moore: No, sir.

Examiner Mackley: What was it?

Mr. Moore: We are large borrowers and the income tax law will not allow us interest on any amount in excess of our capitalization.

Mr. Kirby: You mean the corporation tax.

Mr. Moore: The corporation tax will not allow us interest on anything in excess of our capitalization, that is one reason. Another reason is that the capitalization even at a million dollars is ridiculously small, and we would rather have the current liabilities wiped out and the stock standing out instead of paid.

580 Examiner Mackley: You were earning only seven per cent on your capitalization of $250,000, were you not, according to the old record?

Mr. Moore: Under the present circumstances, yes. That is, by operating over quite a bit of property and getting the benefit and advantage of property that we do not own and pay anything for, which eventually we will have to pay for. We won't be making any dividend if we were paying for everything that we are using.

Mr. Kirby: In the requirements of the revenue department relating to the returns for corporation taxes, you are permitted to treat as an expense and therefore to deduct, interest which you pay only to a certain extent, and that extent, under the law, is determined by the amount of your capital.

Examiner Mackley: Apply it to this $250,000.

Mr. Kirby: Well, with a capital stock of only $250,000, we could deduct only borrowings to the extent of our capital stock. We could not deduct beyond that.

Examiner Mackley: Could not deduct it from what?

Mr. Kirby: Deduct it from the total income for the purpose of paying corporation taxes on it. In other words, treat it as an expense to be deducted from the gross income, as a deduction which the government will allow in reduction of the total net income on which you have to pay your taxes. In other wards, it enables a road which really has as a permanent investment more than $250,000.00 to get nearer to the actual conditions by increasing its capital stock to somewhat meet the actual conditions, whereas the situation which previously existed was nowhere near the actual conditions.

581 Examiner Mackley: You say that that will not pay the indebtedness to Mr. Adolph Busch. How much does the Manufacturers Railway owe him, as a matter of fact?

Mr. Moore: $894,500.00 principal, with some interest.

Mr. Kirby: That was at the end of June?

Mr. Moore: June 30, yes sir.

Mr. Kirby: It is since that this increase was made?

Mr. Moore: Since that we have not increased the principal, but the interest keeps increasing with regularity. Then we owe the Bank of Commerce $100,000 and the South Side Bank $10,000.

Examiner Mackley: Is that a usual way of liquidating the indebtedness in the management of corporations to issue additional stock?

Mr. Moore: To take up current liabilities.

Examiner Mackley: Yes, in the form of a stock issue?

Mr. Moore: If those current liabilities are represented by property they either take them up with bonds or stock. A great many roads are built on current liabilities which are wiped out at the proper time by either stock or bonds. Having no bonds, and not caring to put a mortgage on the property, we are wiping this current liability out with stock as far as that million dollar issue will go.

Mr. Kirby: You mean you are extinguishing a liability. You do not owe that money any more?

Mr. Moore: It is extinguishing it.

Mr. Kirby: It is no longer a debt of your corporation but has been converted into a permanent investment, and as to that amount Mr. Busch is no longer a creditor but he is now a stockholder?

Mr. Moore: Yes.

Examiner Mackley: How long have you been indebted to Mr. Busch in that amount?

Mr. Moore: It has fluctuated, but the original indebted-
582 ness was incurred when the road constructed their viaduct.

Examiner Mackley: When was that?

Mr. Moore: About 1908 I think it was completed. They carried it along on current liabilities and then for a while part of the loan was negotiated through the St. Louis Union Trust Company, and when we——

Examiner Mackley: But since 1908 you have been indebted to Mr. Busch for a considerable amount?

Mr. Moore: Well practically ever since I have been here we have been indebted to Mr. Busch a considerable extent. He has financed the road in fact. Whenever we need money we go to him and get it.

Examiner Mackley: As a matter of fact, how much additional money will you have to put in this extension work?

Mr. Moore: We will have to borrow more money as we understand.

Examiner Mackley: Just a minute. By reason of this change in the form of the indebtedness to Mr. Busch will it be the interest that is saved?

Mr. Moore: We won't have any. As we extend and create more property, we will probably have to ask for another increase in our stock or put a mortgage on and issue bonds.

Examiner Mackley: But this increase of your capital stock, with particular reference to the amount that was owed to Mr. Busch, wherein is that going to benefit the Manufacturers Railway in the way of extensions and additional money?

Mr. Moore: It is paying for the apple that has already been eaten, paying for the property already created. It discharges the debt.

We are not increasing our liability one cent. We are increasing
a stock liability and decreasing a note liability at the same
583 time. I do not think that I have given you to understand that we did that to get money on which to go ahead. We

will have to do something else to get additional money with which to go ahead. The advantage in this issue is in retiring a current liability, for stock, and the advantage of getting a capitalization instead of a movable current liability. It is a financial advantage in that I have no interest of five per cent to pay. That is a big advantage, but I would not consider that the only advantage. I decrease my taxes—that is an advantage. When the second hearing was concluded there was only $25,000 of stock outstanding on property which stood on the books at relatively two million dollars, and I could borrow $25,000 at five or six per cent and count that interest in as an expense in the operation of my property, but I was borrowing close to a million dollars and the interest on everything in excess of that $25,000 did not go as an expense. Now, I can borrow one million dollars current liability if I please, and the five per cent paid on that will go in as an expense toward corporation taxes instead of income tax, I save money there, and I do not have to pay any interest on that much of that debt to Mr. Busch. Mr. Busch has faith in the property and wants it. He could dispose of a good part of it if he wanted to sell it, but he is entitled to his pro rata under the laws of Missouri and he exercises his right to take his pro rata part of the stock. He could not have taken more than his pro rata if he had wanted to, that is, unless it was waived by the other stockholders of record. It would not have been of any advantage to the Manufacturers Railway Company to have Mr. Adolphus Busch take the whole additional issue, if he had waived his right to take it himself, because we can take the money that Adolphus Busch pays and pay off that much of the current
584 liabilities that we owe to Mr. Adolphus Busch. In the accounts of the Manufacturers Railway on its financial condition the rate of return on investment in dividends will be computed on the basis of the one million dollar capitalization, that is, in the event that there are any dividends, whereas, before it was on the basis of $25,000. Only $25,000 of the $250,000 was issued up to some time in March or April. But so far as any dividends are concerned, the condition would be that they would now be determined on the basis of one million dollars capital stock, and probably it is worth something over $2,000,000.

T. A. HAMILTON testified:

I reside in Webster Groves, Mo. I am attached to the personal staff of the vice president in charge of operation of the St. Louis and San Francisco Railroad, assigned to special duties and some statistical work. I began in 1888 as a messenger boy in the district passenger agent's office of the Canadian Pacific at Toronto, Canada, and was there some months. I was then junior clerk in the office of the assistant general manager of the old Chicago and Grand Trunk road at Detroit from 1888 to 1889, subsequently clerk in the office of Mr. Blanchard, chairman of the Central Traffic Association, Chicago, in the latter part of 1889; from the spring of 1890 until 1900 I was clerk in the accounting department of the Missouri Pacific Railway, St. Louis. For a few months in 1900 I was employed as

bill clerk for the Illinois Central at East St. Louis, and from the latter part of 1900 to 1904 I was first bill clerk and subsequently chief bill clerk for the Louisville and Nashville Railroad at East St. Louis. In this last position it was my duty to apply rates, to determine rates and divisions of traffic moving through East St. Louis over the lines by whom I was employed to way-bill freight.

585 I was promoted from chief bill clerk of the Louisville and Nashville Railroad at East St. Louis to the position of chief clerk to the general agent of the freight traffic department at St. Louis. This position added to the experience obtained in East St. Louis, that is, in respect of freight rates. This experience included the handling of absorption of terminal charges and the charges which could not be absorbed.

I left the employ of the Louisville and Nashville Railroad in 1906, and became a member of the staff of Haskins & Sells, Certified Public Accountants, New York, having branch offices at various places. I remained with them until the first of January, 1912, at which time I took service with the Frisco Railway.

I consider that I have special knowledge of the cost of operation as applied to railways and with respect to freight movements and terminal movements. While a member of the Haskins & Sells organization, in addition to assisting or having charge of the periodical audits of transportation lines the names of which I am not at liberty to mention. I was also employed for several years in the conduct of investigations preparatory to the trial of the Missouri and Arkansas rate cases. I had direct charge of the accumulation and preparation of practically all of the data submitted by the states in those two cases, I mean the suits brought by the railroads to enjoin the enforcement of the two-cent passenger fare and the maximum freight rate laws passed by those states. My experience in connection with these cases and the investigation work done gave me a great deal of experience in the matter of determining the cost of handling freight movements. These cases made it necessary, of course, to examine minutely into sources of expense.

In the Missouri litigation I examined the records of

586 eighteen railroads, and in the Arkansas litigation five roads. In doing the work we employed different bases for the division of terminal and yard costs between state and interstate than we employed in the division of road costs. In fact that factors vary with the character of expense.

My work with the Frisco since leaving the staff of Haskins & Sells has involved special work as a statistician and accountant. My principal duties, or one of them, is in the analysis of our operating sheets which set forth these divisional costs and terminal costs.

I have examined the books, papers and records of the Manufacturers Railway for eighteen months ended December 31, 1911. One purpose for examining them was to determine the accuracy with which Mr. Moore's records have been kept, and to report to his Board of Directors; and the other to determine the unit of cost of handling traffic on that railroad. In my judgment, based upon my examination, the records are admirably well kept. They were clear, in

concise shape, and I think as well adapted to the needs of a road of that sort as any records could be. And the books of the Manufacturers Railway, of course, set forth in particular detail and in conformity with the Interstate Commerce Commission's requirements the expenses of the road, and I found that earnings were recorded in a proper and systematic manner. I think all the facts as to earnings and expenses were properly recorded. I found no deviation as to crediting of earnings from different sources—that is, these records applied to the business it conducts for the Anheuser-Busch Brewing Association, as well as for its other shippers. I also examined the books and records for the purpose of determining whether the road was operated economically, and my examination convinced
587 me that it was. And except as a matter of operating judgment and policy, as I am not an operating official to that extent, there was not any waste. I based my opinion on this—that the supporting invoices and other data back of every voucher bore evidence of careful scrutiny of the chief executive, Mr. Moore. It was evident he was looking after the pennies, watching the corners, and I base my judgment of the economical operation in that way. I do not know that I am competent to pass on critical operation of the property, so as to say that it was operated as economically as it was possible. As to whether the books and records of the Manufacturers Railway disclosed any extravagance, from my experience I would say that would be purely a matter of comparison. I do not feel competent to pass on the matter of taking a property by itself and saying whether or not it was economically operated—that is an operating matter.

I can interpret operations as I find them in books, but it would be purely a matter of comparison with some other establishment, and I would not have sufficient knowledge to make that kind of a comparison. The operating costs are clearly reflected on the books and the unit cost can be determined from the records, but the question whether this unit cost be low or high is one for an operating man to pass upon, and by an operating man I mean one who has conducted operations and not one who has analyzed them.

The opinion that I have stated is based on the care exercised in making the disbursements. I conducted my examination so as to determine whether the earnings and expenses for the year ending June 30, 1911, as set out in the annual report were correct. These I verified from original sources, the record of income account showing revenues and expenses, charges and credits of the Manu-
588 facturers Railway for the year ended June 30, 1911. I went over the property and looked at its physical characteristics as reflected in the engineering records. This examination of the character of its track construction showed that the property had part of its yards at the river level and part on the bluff, that is quite a steep grade. It also crossed the Iron Mountain tracks on a viaduct of which the maximum grade was, I think, about two-tenths of one per cent, or perhaps two per cent. I have not the figures but I did make the record at the time. My general recollection is this: That owing to the congested condition of the territory that it serves, the

lack of elbow room, that the curvature is very great, with a multitude of short spur tracks and frogs and switches, and that it is all yard construction, all construction that is conceded to be very expensive to maintain. It is an established tenet among maintenance of way men that the weakest point in your track is your frog and switch points, and as I recall the Manufacturers Railway, it is practically all that kind of construction—very little straight main line to it. There is no question but that the existence of many curves and of relatively steep grades adds to operating costs, both as to maintenance and as to operation. I think that would be almost self evident.

The freight revenue records disclose that the Manufacturers Railway business is largely perishable. It is the practice of all railroads to expendite the handling of perishable freight. I have never heard of one that did not. I have investigated movements of that kind and have had experience upon which to base my information and opinion. In preparing data in the Arkansas rate case it was necessary to locate way-bills covering some 286 cars working back from the wheel reports or the conductors' train records, and in tracing that movement located those cars in the terminal handling, I, of
589 course, was aware of the character of the freight, having the way-bill before me, and this showed, of course, expedited movement of perishable freight. If this class of freight was not expeditiously handled, the road would pay out all the revenue in damage claims. On the average, the character of service which the Manufacturers Railway is required to render in order to serve its patrons is peculiarly expedited service on a great portion of its traffic. I recall seeing several movements of one or two cars. I understand from interrogating their operating employes that it is commonly the practice that the character of the freight makes it necessary to haul cuts of one or two cars perhaps the whole length of the grade in order to expedite the movement, whereas in the case of dead freight, the movements could be made in solid trains of cuts of from 15 to 20 cars, thus making for more economical operation.

I saw no evidence to indicate that the Manufacturers Railway Company was rendering any better service to the Anheuser-Busch Brewing Association than it was rendering for other breweries it serves.

The Manufacturers Railway, at the time I made my investigation, had no cars of its own, but from an approximation that I made for the month of December, 1911, that month two-thirds of the cars handled were private line cars, one-third were other than private line cars, that is, cars of railroad ownership. I found no record showing that the Manufacturers Railway Company paid anything for the use of the private line cars. Out of 3,853 cars handled in December, 1911, 2,552, approximately 66 per cent, were St. Louis Refrigerator Car Company cars.

Prior to December, 1911, the Manufacturers Railway Company was not operating under the per diem rules agreement of the
590 American Railway Association. I found vouchers in favor of the Terminal Railroad Association or the St. Louis, Iron Mountain and Southern as being entitled to car service. These

vouchers evidenced the payment for the detention of cars on the rails of the Manufacturers Railway in excess of 48 hours at the current car service rate which is quoted per day of 24 hours. My recollection is that these vouchers bore on their face a protest against such payment. The effect of assessing that car service against the Manufacturers Railway was that the Manufacturers Railway was accorded no greater privilege than was accorded any other consignee or shipper of freight, and in that respect was treated differently than other railway lines operating in St. Louis. It is my understanding that lines which are members of the per diem agreement are allowed an arbitrary reclaim of six days on cars delivered to them. The accounts of the Manufacturers Railway showed that all of its patrons were charged car service according to its tariffs, that is, they were allowed 48 hours' free time for loading and unloading. These car service charges were assessed on private line equipment as well as on equipment belonging to line carriers, and this was done without regard to ownership or identification of either consignor or consignee.

The Manufacturers Railway, in order to give its shippers and consignees the same advantages as were currently accorded other shippers and consignees in St. Louis, had to allow these shippers 48 hours' free time, and in as much as the Manufacturers Railway was allowed but 48 hours itself from the time of delivery of the car by the Iron Mountain or the Terminal, it had no time left in which to make the movement to and from the interchange track in order to
591 place the car for loading or unloading and in that way its free time was entirely absorbed by the shipper or consignee, with the result that the Manufacturers Railway had to pay out more for car service than it was able to collect, and the amount it had to pay out depended on the additional time necessary for it to consume in the use of the car. The only saving they could make was when the shipper did not use his 48 hours, which was the exception rather than the rule. I found that the private line cars handled by the Manufacturers Railway were not operated under per diem rules agreement.

From my examination of the books of the Manufacturers Railway, I prepared a statement showing cost per car, operating cost per car of business handled by the Manufacturers Railway for the fiscal year ended June 30, 1911.

(This statement offered and introduced in evidence as Complainant's Exhibit No. 60.)

This statement shows the operating revenues, operating expenses, taxes, rentals, income charges and credits, and net income from operation of the property as recorded on its books. It also shows the number of cars handled in inter-work or inter-plant switching, interchange with connections handled in intra-city switching, cars handled in weigh service, the total being used to ascertain the unit cost per car which is shown in the statement. I examined the kind of service rendered by the Manufacturers Railway so that from its books and records I was able to make an exact computation of the unit cost per car without taking into account any arbitrary assump-

tions. The exact average cost per car was ascertainable for the reason that the company handled but one kind of business. Therefore, it was unnecessary for me to arbitrarily attempt to divide or
592 apportion any one class of service from any other class of service. The records themselves disclosed all the essential data. This statement shows the general average unit cost of every kind of movement which the Manufacturers Railway makes. The operating expense per car average for the year ended June 30, 1911—that covers maintenance of track, transportation and general expenses—$2.448, taxes 11.02 cents, interest on operating capital, or notes payable, if you will, 57.04 cents, making a total cost per car of $3.14. The records were not so kept as to show separately the cost of intraplant movement as distinguished from local switching. I have never seen costs so kept by any railroad.

I would say that the operating ratio, approximately 64 per cent, is not relatively high. I think it would cost 64 cents to earn a dollar, excluding taxes and interest on the floating debt.

The general expenses are a little out of proportion. I was interested in that phase of it, and found it was due to the fact that the road had more general officers than subordinate officers, and that the general officers' duties extended into departments of work along the same lines. The president and general manager was interesting himself in work that on a larger railroad a roadmaster would look after, and to a certain extent he was also giving attention to work that the shop foreman would do on a larger road, and while his salary is properly chargeable to general expense, the expense was not of the character incurred for the purposes which are usually understood as covered by expenses. On a larger road these items of expense would be classified under other headings and would scarcely affect the operating ratio. I do not think anyone could claim that an operating ratio of 64 per cent was high for any road in this particular
593 section of the country; that is, of course, based on comparison with conditions on other roads that come to my notice. Of course there are two sides to the operating ratio—it may be low for more than one reason, but from a scrutiny of the records of the company I found that the management was giving a careful supervision to the operation of the property. I think that is evidenced by the way disbursements are handled and what their correspondence files show. I do not feel qualified to discuss its physical operation.

I figured the percentage of net return on investment, and the books showed as of June 30, 1911, that their investment and net earnings given in Exhibit 60 would have yielded a return of 7.4 per cent.

Cross-examination by Mr. Colston:

It is quite a long story to state how I divided the cost of traffic between the freight service and the passenger service, and as between the interstate traffic and the intra-state traffic in the Missouri and Arkansas rate cases. In the Missouri rate case the State accountants accepted the division tendered by the carriers as between freight and passenger, and subdivided state and interstate expenses

largely upon the ton and the passenger mile basis with this refinement: That the yard and terminal expenses were divided on a tonnage basis charging two handlings to every ton of state freight to every one of interstate, and none at all on trans-state.

In the Arkansas case the matter was gone into in greater detail. For instance, in the testimony of witnesses in the Missouri case, we endeavored to allocate the cost of local and through freight trains, and local and through passenger trains, and then to determine the performance of those trains expressed in ton miles or passenger miles, and to divide train cost on that basis. We still di-
594 vided station cost and yard cost on a tonnage or wheel basis.

We located on a variety of bases the cost of operating through freight trains and local freight trains, through and local passenger trains. That was done for the reason it was claimed that there was a heavy extra cost attendant upon the state traffic particularly in conducting transportation, largely due to its handling on local freight trains. We first determined the cost of operating local trains and the cost of operating through trains, and then segregated that cost between state and interstate on the basis of the ton mile and passenger mile performance of those trains. Ascertaining the cost of the two classes of trains is quite a lengthy performance. The classification of operating expenses provided for by the Interstate Commerce Commission classification gave us our yard and terminal expenses.

The division which was made on a passenger or ton basis was only extended to expenses as you find them expressed in the transportation group of the Interstate Commerce Commission, and in the Missouri rate case it is my recollection that we made no allowance in our terminal expenses for any item of maintenance of way and structures or for the maintenance of equipment. It undoubtedly is true that the expense of maintaining tracks in terminals and yards in terminals makes up a part of the expense of maintenance of way and structures.

It is also undoubtedly true that switch locomotives and the handling of cars in a terminal make up a part of the operating expenses of maintenance of equipment. This was the method used in the Missouri rate case, and to this extent it was wrong, so that it was changed in the Arkansas case. In the Arkansas case we distributed our expenses between local and through trains.
595 The ascertainment of how much interstate freight was handled on local trains and how much intra-state freight was handled on those trains, and the proportions similarly handled on through trains, was made between the local trains for an agreed period. I personally directed the work, took the wheel reports for all of the local freight trains moving in Arkansas, as shown by the dispatchers' train sheets, and having located the local trains according to the wheel reports of their performance in six months, we went back through the auditor's records and located the way-bills which covered all of the carload shipments on those trains. Having the way-bills before us, we of course were able to determine the classi-

fication of freight as between state, interstate and trans-state on its haul in Arkansas in which we were interested. We were unable to classify as to merchandise or less than carload shipments. This was peculiarly true of shipments that moved from and to small stations. So, by agreement, we charged all of those against the state business, but it was only about four per cent of the total. On the passenger side we made an analysis of the conductors' trip reports. I examined their reports and the train auditors' reports in order to get at the state and interstate traffic. This was done for a given period of thirty days.

Mr. Kirby: Has this anything to do with the Manufacturers Railway?

Mr. Colston: I was just asking about that as a matter of showing his qualifications.

Mr. Colston: Now, Mr. Hamilton, coming down to this examination which you made of the reports of the Manufacturers Railway Company, it is a fact, is it not, that your certificate that you have given, or your approval of the statement of earnings and
596 operating expenses, is that you found these expenses set forth on the books of the company and that the expenditures had been made for those amounts as duly evidenced by vouchers or by estimates of depreciation, etc.?

Mr. Hamilton: Yes, sir.

Mr. Colston: And that there was no juggling of the figures in drawing from the books to the statements made to the Interstate Commerce Commission or reported to the stockholders?

Mr. Hamilton: All the disbursements were properly supported, and all the charges by journal entry apparently correct.

I would say that as to the charges for the depreciation of equipment as being reasonable or ordinary, it involves an element of judgment and in a sense is an assumption. These records show that the rate of depreciation is something like 20 per cent. I do not know that depreciation is a sound topic in present company, but my opinion is that as a settled principle the carriers have undertaken to fix a basis on their judgment, and I have seen such a widely varying scale that I do not think that five years is the real life of any locomotive.

I am not testifying as to the reasonableness of any salaries from a practical standpoint. My recollection is that there was a reserve set up for purposes of this litigation. I do recall that car service charges were collected from the Anheuser-Busch Brewing Association.

SAMUEL MCKISSACK WOODWARD testified:

I reside at 3656 Arsenal street, St. Louis, Mo., and am yard master for the Manufacturers Railway Company. I have been so employed since a year ago last June. I began railroading as a mes-
senger boy, learned to telegraph, worked all the desks in the
597 local freight office with the exception of the cashier's desk and the abstract desk. I ran trains for ten or fifteen years as conductor, had charge of the Illinois Central terminals at Chi-

cago, that is, I was station master there at night. I had charge of the Kentucky and Indiana Bridge Company's yards at one time some years ago, and I have been lost car agent for the Missouri Pacific road. With the exception of four or five years I have been continually in railroad service—that is, for about thirty years. Most of my services had to do with terminal yard and train work. My experience as freight conductor and as yard master brought me in touch with different freight terminals and freight yards. My work with the Missouri Pacific also brought me in touch with several of the yards of the Missouri Pacific system.

The Manufacturers Railway is now operating three night engines and three day engines, that is, six engines in the 24 hours. We have a switch crew for each engine. The switch crew is composed of three men, a foreman and two helpers, and is the standard switching crew. About two-thirds of the tracks of the Manufacturers Railway are located on hills and around curves. It is hard to operate around curves and on hills. Our river yard is a normal yard.

We can handle up our Pestalozzi and main line with our largest engines about four or five cars loaded with coal. We can handle about five or six cars loaded with cases or bottles up the Dorcas street main line. It takes us about three times as long to operate on those hills as it would in a normal yard, for the reason that we have to set brakes. We cannot kick cars into another switch—we have to push the car in, stop and block the car with a chock, set the brakes on it and then ease the engine away from it to be sure it won't follow us out after we leave it, and if it happens to be
598 a slippery day, or a rainy day, the difficulties are increased.

We have to get a little sand from the engine and put it on the rails and block the car. In the winter time when snow is on the ground, we have to burn these blocks so that the chocks have a soft side, the soft side being placed next to the rail so when the wheel comes onto it it mashes down and holds there.

It takes us about three times as long to switch a car in our western zone, the part up above Second street, *than* it does in other places. The three men comprising our switching crew must be with the engine. The foreman cannot leave his engine and men for any length of time, because our work is hazardous. He must be there to see that the men do not let the cars get away from them. He must be there at all times to see that cars are properly chocked after they have been shoved in. Signaling in our yard is difficult on account of the curves. We frequently have to lose time because men cannot see around the curves, that is, in going into certain tracks the curve is so abrupt the engineer will have to stop and wait until a switchman can walk back for a sight. A great many of our tracks are laid on public streets, and they cross public streets at frequent intervals. When working along public streets we have to work carefully and slowly. There is no other way to work. Our greatest speed in the handling of a cut of cars in our yard is not over four miles an hour, that is, except in the river yard, where we can go a little faster.

In the Second street yard at Pestalozzi, where we load beer, we can handle 10 or 12 cars with an engine, that is, we can shove that many cars into the yard. We can pull out, of course, all we can couple up. In switching up Dorcas street we can shove up five or six cars, and loaded with coal about four or five. In the First street yard we can handle in one cut I should say 15 cars.

599 The largest cut of cars that we can take from a connection and distribute in our classification yard is a cut of from 12 to 15 cars. In a normal yard one can handle a cut of from 40 to 60 cars.

When a road train arrives in the yard, the first thing done is the carding of the cars by the yard clerk. The way-bills are looked over and the cars are carded according to the bills. The cars are then inspected by the car inspectors. After the train has been properly carded and inspected, the yardmaster designates an engine to switch that train. If it is in a yard not extraordinarily hilly, the engine could go down, take hold of 40 or 50 cars and pull them back onto a lead. But before doing this the foreman of the switching crew would first mark up these cars with chalk, then the field man lines the switches according to the numbers on the cars, then he pulls back this cut. The foreman gives the signals, the head man or pin puller pulls the pin and the car is sent in and a switch signal is given to stop, then to come ahead. The pin puller pulls the next pin and the car is dropped off at its proper switch, and so on. There will be five or six separations. The field man watches the end of the car. These cars are thrown into whatever switch they belong. In an average yard a train of 60 cars can be switched in 20 or 25 minutes. We are able to handle about 12 to 15 cars in a cut. If there are long cars in the train, we can only handle 12. If they are all 34 or 36-foot cars we can probably handle 15.

I would say that we require from four to five times as much time to switch a train of 60 cars as it would take to switch the same number of cars in a normal yard. I think it requires about three times as much effort for the Manufacturers Railway to perform switching as it does to perform the same switching in an ordinary

600 or normal yard. This, of course, has no relation to dollar and cent cost—it is simply the effort to do given work; that is, it requires three times as much labor. We have to push every car that we have. We cannot kick them in. We have to push them in and hold them there. Our tracks are so situated that they are on the side of a hill and we cannot take any chances. We can kick cars in the river yard, but that is the only place where we can.

The ratio of children on our Second street line up to Chouteau avenue is large, and restricts our work. These children run out into the street and we have to be very careful. We do not operate there faster than a man can leisurely walk.

Our First street yard is in first class condition at present. It was overhauled this spring, new rails put in, new ties and the switches are reconstructed. We took out some old ones and put in new ones. There is no more available space in this First street yard for tracks. So far as I can see, all tracks are now constructed that can be con-

structed in that yard. I cannot suggest anything at all that would improve that yard. I would say that the maximum number of cars that we can handle in this First street yard for interchange with connecting lines, and do it every day, would be about thirty cars. It certainly would block our railroad and tie us up tight if we were obliged to handle all of our business through the First street yard.

We pay our switch crews standard pay; that is, the same scale of wages paid by all St. Louis railroads. We pay them for every hour they work. It is my aim to always secure experienced men. I prefer men who have had experience on mountain roads. I have to exercise great caution in employing men that "are not too
601 quick on the trigger"—that is, men that want to give signals—men that are too hasty. I prefer to secure men of from 35 to 40 years of age instead of younger men. These men are not quite so hasty. Our motto is to be slow and sure. Our general instructions are that we should be sure and careful—speed is no object.

Cross-examination by Mr. Colston:

I did not say that we are limited to 15 or 20 cars in deliveries that the Wiggins Ferry Company makes to us in our river yard. I said we could not take in a cut and switch at the south end of our river yard over 12 to 15 cars at one time. The Wiggins Ferry Company can deliver to us on our interchange tracks as high as 70 cars.

In our Pestalozzi street yard, that is the yard just off Pestalozzi street, we can pull out as many cars as we can couple on to. In the First street yard we can pull out from 15 to 20 cars, that is, our track room will only permit us to handle that many. On our Second street line north of Dorcas street we can handle cars just the same as any other switching line located on city streets. We do not have to chock cars on the North Trudeau street track or any of the tracks in that vicinity. It is on Dorcas street that we can handle but four or five cars. We employ yard clerks.

The foremen of the switching crews do not usually leave their crews while doing switching, but they do leave their crews in this way: here is a foreman—a switch list may cover some eight or ten tracks; the foreman is sent to some place where they have a nest of little tracks. He would say to his crew: "Go in on track 1 and get out such and such cars, and I will go here on tracks 5 and 6 and see if I can find these cars that we have listed on this list." Now we do not consider that a foreman has any business to leave his crew for one minute, because of our tracks being on a hill.
602 Yes, it is a fact that generally a foreman is expected to stay with his crew, that is within a very short distance of it.

Yes, I expressed the opinion that it took three times as much effort to do a given amount of work on the Manufacturers Railway as is required in a normal railway. I meant by that that an engine in a normal yard can do three times as much work, handle three times as many cars, as it can handle on the Manufacturers Railway in the same given time. That is, I may have 300 cars delivered to me by the Wiggins Ferry Company tonight, and it would take my engine three times as long to handle those 300 cars in my yard as it

would take an engine to handle those 300 cars in the Terminal yard. This has reference to the work. It has nothing to do with the overhead expenses. I know nothing about that at all.

The Dorcas street yard at the top of the hill is not a level yard. In that yard we are working on the side of a hill all the time. We dare not let go of a car for a second. That yard is all hills. You would be surprised to see how much grade there is. Thirteenth street is at the top of the hill and it is in this Thirteenth street yard at Twelfth street that the Anheuser-Busch Brewing Association loads its bottled beer. Coming down the main line on Thirteenth street from this yard the grade is from three to four per cent, but it isn't over ten feet from the end of that switch (indicating) until that drops so that you can't pull out of there. The biggest engine we have can handle but four cars there.

The Eleventh street yard is the first big yard after climbing the Dorcas street hill. This yard is not level. We can handle but five loaded cars on those tracks, or six cars if empty. On this very track the Manufacturers Railway had a man hurt recently when
603 he fell off the top of a car, the car running over him. This is the yard that has been graded and has a wall at one end. But the grade is such as not to enable us to handle more than three or four cars. It is on the side of a hill. You can hardly drive a horse up there. I do not know how much higher the west end of that yard is than the east end. I know you cannot drop a car in there. The brake won't hold it. The car will go over that wall. You have to take the car in there with an engine and hold it with an engine and couple your air brakes, and hold it until it is chocked.

I am now speaking of the tracks west of Ninth street and north of the Dorcas street main line. The yard in which the Green Tree Brewing Company loads its beer is known as our Eleventh street yard. We have to do this not to prevent the car from running back onto the main line, but to keep it from running over the wall.

The Eleventh street yard, Ninth street yard, Pestalozzi street yard and the Broadway yard are our principal yards. What we term the Ninth street yard is that yard where the brew house of the Anheuser-Busch Brewing Association is located. It is to the south of Pestalozzi street on the corner of Pestalozzi and Ninth streets.

Examiner Mackley: What is the per cent of grade from Second street south in the southern zone, so-called?

Mr. Woodward: I am not posted on that, I couldn't say.

Examiner Mackley: Which is the greater, that grade down toward Potomac street?

Mr. Woodward: The south is the greater grade.

Examiner Mackley: That is greater than the grade up at Ninth and Eleventh streets?

604 Mr. Woodward: Yes. The north is up and down, that is, a little wavy, but the south is right up.

Examiner Mackley: The south from Potomac to Pestalozzi street is the steepest grade you have?

Mr. Woodward: The steepest grade that way. I consider our

Pestalozzi street to Dorcas street about the steepest we have got, both of those are steep.

Examiner Mackley: The grade down there at Second street is straight?

Mr. Woodward: Yes, after you get by the Diesel plant it is right straight up.

Examiner Mackley: And north on Second street it is practically level?

Mr. Woodward: Yes, practically level. After you leave there it runs along like Broadway, it runs up to Chouteau avenue, of course we don't go clear to Chouteau, but within a block of it; we go to La Salle.

Examiner Mackley: Where does that grade commence on your Dorcas and Pestalozzi street, about what street does the grade commence, where do you begin to encounter the grade after you leave the Second street yard?

Mr. Woodward: We have two ways of going up Dorcas street, we come around from our First street yard, we come right around here (indicating), we can come around here (indicating), and then, commence going up. Right here at Second street is where we begin to get the grade.

Examiner Mackley: That is what I want to know, you begin at Second street?

Mr. Woodward: Yes.

Examiner Mackley: Now how about your Pestalozzi street line?

Mr. Woodward: Now when we come off the high line we
605 begin to get the grade at the foot of the high line here (indicating).

Examiner Mackley: What do you mean, Pestalozzi street?

Mr. Woodward: The viaduct that runs over it. If we come from the First street yard we get a grade right at the First street yard, and if we come across the high line—everything that we handle from the Wiggins we have to take over that viaduct.

Examiner Mackley: Then you get to the foot of that?

Mr. Woodward: Then we get to the foot of that. Of course we have a cut-off here you see (indicating).

Examiner Mackley: Yes, I understand.

Mr. Woodward: Of course it is all grade all the way up from that.

Examiner Mackley: If you bring it up Pestalozzi street, I mean?

Mr. Woodward: If you bring it up Pestalozzi street it is all grade all the way.

Examiner Mackley: Clear from First street?

Mr. Woodward: Clear from First street, our heavy grade.

Cars will not stand in the Broadway yard, everything has to be blocked, cars will run out of that yard. In fact we can couple up enough cars in the Broadway yard to push us over the high line, that is why we can start a great many cars out of there. The grade out of that yard is such that we cannot allow a car to stand there. The big engines cannot push more than ten cars into that yard.

Redirect examination by Mr Watson:

The tracks in our Thirteenth and Eleventh street yards within the enclosure are used by any one who wishes to use them, and shippers other than the Anheuser-Busch Brewing Association do actu-
606 ally use these tracks. This is also true with reference to the depressed tracks in the Second street yard of which Mr. Colston has been speaking. In fact the St. Louis Basket and Box Company load in this Second street yard. These tracks are considered public team tracks. The condition of these tracks compare favorably with team tracks in other terminal yards. These tracks are paved with granite, and in fact are the most accessible I have ever seen.

Recross-examination by Mr. Colston:

I have never been in the Louisville and Nashville yards at East St. Louis, but I do know that the Terminal has a yard there, what they call their east yard, which switchmen call "the battle field." In that yard they pull out from 70 to 80 cars in a cut. This cut is handled without a stop. They pull this cut out and keep it coming all the time. They have seven or eight cuts "on the move", as the boys say, they will all be rambling. Cars go upon the tracks on which they belong. The foreman stands with his lantern at night, and in the day time with his arm, and gives the signals. I think that if a railroad had a yard in which they did not handle from 60 to 80 cars in a cut that they would lose money. I do not know this to be the general practice in St. Louis, that is, I can't say positively, but if the matter is investigated it will be found that there is not a yard in St. Louis that isn't handling cuts of from 40 to 50 cars. I do know positively that no railroad would build a yard in which it would be impossible to handle from 30 to 40 cars in a cut and switch the same on a lead. When I say that, I have in mind the Iron Mountain yard and the Wiggins yard on this side of the river. In this Wiggins yard I have seen them handle as high as 50 cars in a cut.

607 G. F. MOORE, resuming, testified:

Referring to Exhibit No. 54, being a statement of average hauls and distances and the service rendered by the Manufacturers Railway Company, and explaining the conclusions stated on the last sheet of this exhibit, will say that this last sheet shows average inbound car movements from the Wiggins Ferry Company and St. Louis, Iron Mountain and Southern Railway to be 1.45 miles, which is a mathematical average. It is arrived at by taking the average haul in the northern zone, which is also a mathematical average 1.02 miles; the middle zone .65 mile, and the southern zone .97 mile, adding them and then dividing them by three, which gives .94 miles—the distance when delivered to the Iron Mountain at First street. Then taking the inbound deliveries from the Wiggins Ferry, the average haul from the northern zone is 2.31 miles, middle zone 1.55 miles, southern zone 2.01 miles, adding these together and dividing by three we have 1.97 miles. When, added to the .94 miles making

2.91 miles, then dividing by two, we have 1.45 miles which is shown on the summary to be the average distance.

This same method of computation is used in arriving at the 1.29 miles. The total average car movement for all zones and all connections, including the return of empties, that is, the average car mileage of all cars handled, is 3.12 miles. This is arrived at by taking the average at the foot of each page of this Exhibit, viz.: 1.87, 2.77, 2.77, 4.09, 4.09, adding, then dividing by five, giving the result of 3.12 miles, which is the mathematical average. This exhibit was introduced merely because the defense and the Examiners have asked about distances between these points, and while they did not demand such an Exhibit, they have asked so many questions about
608 it that I had this Exhibit prepared thinking it might be of some use.

Mr. Hamilton testified yesterday, speaking merely from his recollection, that the Manufacturers Railway did not collect car service on private car equipment. This statement is not correct. As I have previously stated, and which is in the record, we charge car service on all equipment alike to all shippers and users of cars. At one time there was a little delay in the collection because of a case which was decided by the Interstate Commerce Commission—we were waiting for that decision—and which the attorneys will probably remember, and when the decision was made we rendered all back bills, all of which have been paid and there is nothing outstanding, so it is now a clean transaction, we having collected car service on all cars earning car service, regardless of consignee, consignor or style of equipment. This question before the Commission involved car service on private line equipment.

Since the last hearing, the Manufacturers Railway, through its Board of Directors, desired a report on the possibilities and the situation of the Manufacturers Railway as a part of the terminal facilities of St. Louis. Mr. Perkins was selected as such expert and he made a report to the Chairman of the Board.

Mr. Perkins at one time was Superintendent of the Chicago, Burlington and Quincy, located in St. Louis; he was later employed by the City of St. Louis at a salary of $10,000 a year, I believe, to work on their Terminal Commission for the solution of problems here. He is now the railroad expert for the St. Louis Union Trust Company and his duties as such, he tells me, are to pass on properties, regarding the financing of them, and he is supposed to have a wide and accurate knowledge of terminal conditions in St. Louis. He
609 is also an executive and operating official of a number of lines in which the St. Louis Union Trust Company is interested. I have here a copy of the report that Mr. Perkins rendered to the Chairman of the Board of the Manufacturers Railway.

(This document offered and introduced in evidence as Complainant's Exhibit No. 61.)

LOUIS P. GROFFMAN testified:

I reside in St. Louis and am Secretary of the St. Louis Basket and Box Company and as Secretary look after the traffic matters of that company. Mr. C. W. Johnson is the President of the St. Louis Basket and Box Company and testified at one of the previous hearings in this same case. Our plant is located at Second and Arsenal streets upon the tracks of the Manufacturers Railway. We have two plants, one in North St. Louis on the Burlington Railroad, and the plant in South St. Louis located on the tracks of the Manufacturers Railway. Our plant in South St. Louis is now being served exclusively by the Manufacturers Railway.

The business of our plant in South St. Louis for the past 12 months shows a decided increase over the year previous. During the year ended September, 1911, we handled into our plant 188 cars and out 140 cars. For the same period, 1912, we handled in 242 cars and out 244 cars.

As near as I can remember, the Manufacturers Railway has been doing all of our switching since the spring of 1910. For a time service was rendered by both the Iron Mountain and the Manufacturers, and then the Manufacturers Railway did all of our work. I cannot give the exact date that the Manufacturers Railway commenced to do all of our switching, but it was some time in 1910.

The service rendered today is excellent.

610 At a previous hearing our Mr. Johnson testified that we were contemplating making additional facilities at the South St. Louis plant, and an addition that would probably involve an expenditure of some $50,000. That improvement has now been made. At the time of the previous hearing and previous to that time we received most of our logs by water; at this time we are receiving them by rail to a very large extent. We are enabled to handle these logs by rail by virtue of receiving switching service because of a spur track having been constructed. This spur track or improvement was made by the Manufacturers Railway Company.

The Manufacturers Railway has made further track improvement, that is it has straightened out the entire switch and has extended it so that we can load from our warehouse instead of our hauling the goods by team. This has been done by running the track up to Second street, putting it in shape and making it easy of access so that we can load direct from warehouse into the car, or into the car from the opposite side. Before this track improvement was made it was necessary for the St. Louis Basket and Box Company and the St. Louis Cooperage Company to use the same track. The fact that the Cooperage Company is on the east end and our plant on the west end of this switch, it was necessary, when we wanted a car, to disarrange the spotting of the cars for the Cooperage Company and necessitated taking out the entire cut of cars in order to place a car for our use, and today, if it is necessary to spot a car, even during working hours it can be done without disturbing the cars of the St. Louis Cooperage Company. The Cooperage Company may have as many as six cars lined up for loading and unloading. These cars are not disturbed any more.

Formerly we endeavored to spot cars for ourselves and fre-
611 quently had accidents, in fact at one time a man was killed on account of our endeavoring to spot the cars by hand. In those days we couldn't get the motive power to spot the car and so we tried to help ourselves by use of block and tackle and in this way had quite a number of accidents. It is not now necessary for us to move cars by means of block and tackle or by any other means. The Manufacturers Railway have now so improved this track that it is open at both ends; they can enter this track at either end in the loading and unloading of our cars.

There are times when we have three cars on the track, and a fourth car is needed, and in order that we may use same expeditiously we may wish it set in ahead of these other cars. The Manufacturers Railway now pull out these cars and set the fourth car in ahead, in other words they spot cars for our loading or unloading at the point where we require it. They make no additional charge for this service. The Iron Mountain performed the same sort of a service and they made no additional charge for the service, but the Iron Mountain were not able to spot cars as frequently and as satisfactorily as the Manufacturers Railway now do, because they had not the facilities for performing the service. It spotted cars for us the best it could with the facilities it had at hand. The Iron Mountain gave us the best service it possibly could.

The service now being rendered by the Manufacturers Railway has in a large measure contributed to the increase in our business at our South St. Louis plant. If we were obliged to return to the old system we could not have handled the business that we did this year. The conditions that existed in the days that the Iron Mountain was doing our work would have made it impossible for us to have
612 increased the output of our South St. Louis plant. If it had not been for the improved facilities and the improved service rendered us by the Manufacturers Railway, the improvement that was spoken of by Mr. Johnson would not have been made at our South St. Louis plant.

In former years, before this change took place, during the summer months we received orders for fruit packages which had to be shipped very promptly. A great many orders are received by wire. Fruit is perishable and we have to get out our material promptly. It was a common occurrence for us to resort to the loading yard at Dorcas street, or we would go as far as Eleventh street in the brewery yard, or we would load a car wherever we could find one. We sometimes hauled the load as far as Lemp's brewery and it would take us a whole day to load that car, at the very best we could not load more than one car a day. Under present conditions we can load three or four cars in a day, immediately out of the warehouse into the cars. This improvement is so great that it has encouraged us to extend our traffic and to increase our business and we intend to further increase it the next year. The prompt service and the improved facilities of the Manufacturers Railway have been an advantage not only to our plant but to other manufacturers in South St. Louis.

Mr. Watson: Have you noticed any perceptible activity among

manufacturers and shippers since the Manufacturers Railway has commenced to develop and has developed into a railroad?

Mr. Groffman: Well, I haven't made any effort to get information.

Mr. Watson: Your observation and your testimony are simply as of your own business?

Mr. Groffman: I did not know I was going to be called up here, and I have not tried to find out anything regarding other firms.

613

Mr. Watson: What do you know of the plant that is just now being constructed south of your plant, I think it is called the Diesel Engine Works?

Mr. Groffman: I understand they are building a mammoth plant.

Mr. Watson: You have observed that the plant is now under construction, have you not?

Mr. Groffman: Yes, sir.

Cross-examination by Mr. Colston:

When we receive our logs by water we get them to our plant by means of a tramway which runs through a culvert under the Iron Mountain tracks and under the tracks of the Manufacturers Railway. Our plant at South St. Louis has been in operation about thirty years. There has always been a switch into our plant, that is, I have been at this plant for twenty-two years and there has always been a spur or switch for ourselves and the St. Louis Cooperage Company. This switch belonged to the Iron Mountain and we were served by the Iron Mountain before the Manufacturers Railway. This spur was not adequate for our business, that is to say, in order to load a car in the time we had promised it, we had to look over the yards and find a car and haul the goods to it. The Iron Mountain would not bring a car to us for outbound loading.

Formerly we received our logs by water. In those years the logs came by water from New Madrid, Missouri; Carruthersville, Missouri, and from that vicinity. It is practicable to handle logs from the water's edge to our mill. We operated the tramway ourselves and still operate it. We now receive our logs from points along the Frisco from below Cape Girardeau, such points as Steele, Missouri, etc. We bring in a great many logs from Steele via the Frisco, also from Dale and Star Switch. These logs are delivered by the Frisco to the Manufacturers Railway Company. We do not know what the Frisco pays the Manufacturers Railway for the service. I know nothing of the contract that the Frisco may have with the Manufacturers Railway. A good many of our logs come via the Missouri Pacific and Iron Mountain.

614

Redirect examination by Mr. Watson:

This tramway we use for the handling of logs from the water front and to our plant, we are still using it, not only for the logs that arrive by water but we also use it for handling logs that are received by rail. This tramway is a plant facility for handling logs, whether the logs

are received by water or by rail. We use this tramway for pulling logs out of the river and in handling of the logs received by rail we use a derrick, that is, by means of this derrick we load the logs onto small tramway cars. As before stated, we handle all logs that we receive, whether by raft, barge or rail, by means of this tramway.

The additional facilities of the Manufacturers Railway Company enables us to handle logs by rail. Formerly the cars of logs would accumulate to the extent of 20 or 30 cars at a time. We could not get them to our mill because we did not have the motive power to place these cars so we could get at them. Our mill was without timber for a month at a time when there were carloads of logs in the yard that we could not get.

Our mill is probably 800 feet from the river front. The spur of the Manufacturers Railway runs toward the river. The Manufacturers Railway does not deliver these logs at our sawmill for
615 the reason that they cannot reach the sawmill, so we handle these logs by means of the tramway. We handle a dozen different kinds of logs and when they are unloaded they are sorted out into different piles, and if we need a maple log, the logging crew brings up a maple log, and if we want an elm or an oak log they bring that up. We could not afford to dump all our logs into one pile at the mill.

These two photographs (Exhibits 58 and 59) are pictures of our unloading yard to which I have referred and the cut underneath the track as shown in Exhibit No. 54 is our tramway track. Our logs, whether delivered by the Iron Mountain or by the Manufacturers or by the river, are hauled by the tramway under the tracks of the Iron Mountain and the Manufacturers Railway to our plant. We have this same tramway at our North St. Louis plant, the tramway being constructed under the Burlington tracks.

It is a fact that the Iron Mountain cannot handle logs into our unloading yard; the Iron Mountain has no track into this yard, in fact, as I understand it, the Iron Mountain has had no track on which they could operate since the Manufacturers Railway came into existence, so that we are dependent absolutely upon the Manufacturers Railway for the delivery of logs that we receive by rail. At our North St. Louis plant the Burlington Railroad performed the same spotting service that the Manufacturers Railway performs at South St. Louis and they make no additional charge for the spotting service.

JOHN A. REHEIS testified:

I am in the lumber business with the St. Louis Lumber Company; I am President of that company; I have been in the lumber business in St. Louis for 26 years.

Our company operates six different lumber yards at St.
616 Louis. We have three yards served by railways. One yard is located at Vandeventer avenue and Forest Park boulevard, on the tracks of the Wabash; one yard is located at Vandeventer avenue and Shaw avenue, on the Oak Hill branch of the Iron Mountain; our main yard is located at Broadway and Barton street and is served

by the Manufacturers Railway. We have private spur tracks into our yard located on the Wabash, and when we receive a car moving in interstate commerce for that yard, and it arrives over some trunk line other than the Wabash, the Wabash performs the terminal service in delivering the car to this yard and the Wabash's charge for this switching service is absorbed in the St. Louis rate so that our company pays nothing to the Wabash for performing this switching service. Formerly some of the lines made a charge and at the present time if we receive lumber over the M., K. & T., we pay an additional switching charge, which additional charge, I think, is $1.00, but generally speaking, cars are delivered to this yard at the St. Louis rate.

We do quite an extensive interstate business which we forward from our St. Louis yards. The switching charges on out-bound business are absorbed in the St. Louis rate just as on the in-bound business. We have some shipping from our yards to other plants in the city of St. Louis and on such movements we pay a switching charge. This same situation is true of shipments received at and forwarded from our yard located at Vandeventer avenue and Shaw avenue on the Oak Hill branch of the Iron Mountain.

At our yard located at Broadway and Barton street the Manufacturers Railway has been serving us about a year. This yard runs easterly from Broadway along the north side of Barton street,
617 nearly to Second street. The Iron Mountain served us exclusively at this yard before the Manufacturers Railway began to serve us. When the Iron Mountain did serve us in this yard they performed a spotting service without extra charge. The Manufacturers Railway at this time performs the same service without extra charge. At this time we do not use the Iron Mountain at this yard.

I can safely say that on our out-bound business we get the best service from the Manufacturers Railway that we have received anywhere. We formerly had a yard on the Terminal which we abandoned the first of the year and we now do all of our switching from this Broadway yard located on the Manufacturers Railway. I would not exactly say that the service we are now receiving at the hands of the Manufacturers Railway had anything to do with the abandoning of the yard on the Terminal, but we found we could do all of our shipping from this yard and do it properly, so we abandoned the Terminal yard on that account. We were able to secure additional ground which we did not have formerly and that has had something to do with our giving up the north end yard.

We have had excellent service on our out-bound business, which is a very important feature, because the business requires quick action; we have to compete with Chicago and other large markets and of course in order to get that business we must give it prompt attention. Lumber is a sensitive commodity, a slight additional expense in the receiving or shipping of cars makes a difference in our business. Lumber is bulky and very expensive to handle.

I think that all lumber yards that have private tracks located within the switching limits of St. Louis receive deliveries upon spur

tracks and upon their private tracks at the St. Louis rate.
618 From our experience with the Manufacturers Railway we consider it a very valuable thing to the merchants in South St. Louis. Since we have been doing business with the Manufacturers Railway we have found it convenient to use our Broadway yard for the bulk of our business rather than our other yards.

Cross-examination by Mr. Colston:

I cannot say just how long the Iron Mountain served us before the Manufacturers Railway, because we have only owned that yard for about four years. This yard was purchased about four years ago, but the track had been in the yard about 15 years. The Iron Mountain performed all the service that the Manufacturers Railway now performs, it spotted our cars and moved cars in and out just as the Manufacturers Railway now does.

The part of the track formerly required by the Iron Mountain to reach our yard passed over ground that has recently come into the possession of Mr. Busch. This ground is not owned by the Manufacturers Railway. The additional ground that we were able to secure at our Broadway yard was one of the inducements that caused us to move from the Terminal Railway.

We now have the same track in our yard that the Iron Mountain had, with an additional track. I do not know why the Iron Mountain ceased to operate the track into our yard. When the Manufacturers Railway came in it solicited our business and put in the additional facilities for us. We have two derricks in this yard and when the Iron Mountain had this track we could not reach a sufficient amount of ground with its tracks. The additional ground belonged to Mr. Busch. Yes, the Manufacturers Railway's service has been the best on outbound shipments that we ever had. There
619 is not much difference with reference to the inbound shipments.

The Iron Mountain performed practically the same service that the Manufacturers Railway does now. When we were using the Iron Mountain we were quite frequently compelled to load cars on the Wiggins, because we could not get cars on our tracks in time to load out the business.

Mr. Busch owns part of the land where our Broadway yard is now located. None of it was owned by him when we located there. The Barton Realty Company owned it and we leased it from them. The Barton Realty Company sold it to Mr. Busch, and as our lease had expired we were compelled to make the lease with Mr. Busch and at the same time lease some additional land. This additional land was located on Second and Lami streets, about 230 feet on Lami and 100 feet on Second street. Lami street is the first street north of Barton. This additional land we used as part of our lumber yard, and we have just extended our yard onto this additional land. We put in an additional planing mill there and the balance of it we use for piling lumber. This additional land is leased at the same proportionate rental. This lease was made in February or March this year.

I think we commenced doing business with the Manufacturers

Railway about a year ago, that is, about September 1, 1911. We did not receive anything gratis, we have to pay a rent for all the additional land that we now have for yardage or for any other purpose. We pay $1,000 more than we did before. In securing this land we dealt with Mr. Busch. So far as our relations with the Manufacturers Railway are concerned, it came in and offered us improved and extended railway facilities if we would give it our business. It
620 had to build additional tracks in order to get into our yard and these tracks enabled us to handle lumber more freely with our electric derricks. We now have additional tracks on our ground and besides there are double tracks on Second street that we can utilize for loading and unloading whenever we like. The spur track connection which we formerly had with the Iron Mountain is still there, it has not been taken up.

Examiner Mackley: Do you pay about the same rate for this additional land as you did under the original lease?

Mr. Reheis: No, we pay more.

Examiner: Pay more?

Mr. Reheis: Yes, sir. Our old lease was $6,000, whereas we are now paying $7,000.

Examiner Mackley: I mean the additional land you got afterward.

Mr. Reheis: Well, but the additional land would make no difference you know, it is altogether in one lease now.

Examiner Mackley: You had to pay more for this additional land, did you not?

Mr. Reheis: Oh, yes, certainly.

Examiner Mackley: Proportionately as much as the other?

Mr. Reheis: Proportionately, in other words we are paying proportionately more than we did before.

Examiner Mackley: I mean on the additional ground, are you paying more than you did on the original ground?

Mr. Reheis: To make myself clear: On the additional ground we now occupy we are paying more for the lease in general, as a whole, than we did formerly.

Examiner Mackley: But is there any way that you have
621 segregated the original from what you paid for the additional ground?

Mr. Reheis: No, the ground was figured at so much a foot and the additional ground was taken in on that same basis.

Examiner Mackley: On the same basis as the other?

Mr. Reheis: Yes, sir.

Examiner Mackley: And your lease with Mr. Busch does not differ in its terms substantially from the lease you had originally from the original owners of the property?

Mr. Reheis: No, the lease is practically the same, only of course it is extended in time, and as I said, it is higher in price that the old lease was.

Examiner Mackley: But substantially the same provisions?

Mr. Reheis: Yes, sir.

Temporarily we have piled lumber on the Iron Mountain's spur track.

Examiner Mackley: If it were not for the ownership of this land by Mr. Busch, would there be any reason why you should not give your traffic inbound and outbound to the Iron Mountain? Does that have anything to do with that?

Mr. Reheis: No, sir.

Examiner Mackley: When did you stop receiving and delivering shipments to the Iron Mountain—before or after the lease or ownership of this property by Mr. Busch?

Mr. Reheis: Well, that of course happened after Mr. Busch became the owner—I think when the lease was made.

Examiner Mackley: But you began shipping over the Manufacturers Railway after he had acquired the property?

622 Mr. Reheis: We could not do otherwise because the Iron Mountain had their track in and they had no facilities for getting into our property.

Examiner Mackley: That is, their tracks were on the Busch property?

Mr. Reheis: Yes, sir.

Examiner Mackley: If the Iron Mountain had had free access to that property, would you have taken your business away from the Iron Mountain and given it to the Manufacturers from the standpoint of service?

Mr. Reheis: We would not like to go back to it now because we think we have very much better service by the Manufacturers.

Examiner Mackley: I understand that you did not know at that time that you quit receiving your lumber from the Iron Mountain whether the Manufacturers Railway would give you better service or not?

Mr. Reheis: They promised us it. When I had this matter up with Mr. Moore he assured us he would give us good service, that is, better than any other road could.

Examiner Mackley: But you had not had any dealings with them and could not know at that time whether that promise could be carried out or not?

Mr. Reheis: No, that was a chance we had to take.

Examiner Mackley: Under those conditions, without knowing anything of the kind of service the Manufacturers Railway would render you, and assuming that after the property was transferred to Mr. Busch, the Iron Mountain still had access to that property, would there have been any reason from the character of the service, or otherwise, why you should not have still continued with the Iron Mountain?

Mr. Reheis: Not any more than like any business proposi-

623 tion. If a man tells you he can give you something better than the other fellow, you try to deal with him. Of course I cannot testify as to some of the other places in the south end that said they were finally pleased with the service. We were compelled to load cars in the yard, and from the fact that we could not get cars on the Iron Mountain tracks, which meant we had to haul the stuff

several blocks, whereas if we could get cars on our own tracks we would not have to do so.

Examiner Mackley: Ever have anything of that kind now?

Mr. Reheis: No, sir; never load a car outside of our yard.

Examiner Mackley: At what time would you consider that your services with the Iron Mountain were unsatisfactory?

Mr. Reheis: I can say this—that it was in this way: We were frequently held up in getting cars for our outside shipments. As I said before, as far as the inbound was concerned, it was practically the same as the Manufacturers.

Examiner Mackley: Were other shippers held up on account of equipment? Was there any period of car shortage or was that peculiar to your yard?

Mr. Reheis: I suppose other people suffered the same way.

Examiner Mackley: That is, it was a general condition?

Mr. Reheis: Well, possibly it was. Here's the idea, to make a long story short, we had a case yesterday, wanted to load a car from our Shaw avenue yard, telephoned the Iron Mountain to furnish us a car, the car had to go out—was promised to be shipped yesterday. Last night we had not received the car and when I left the
624 office this morning no car had been placed. That never happened to us on the Manufacturers.

Examiner Mackley: The Manufacturers since that has made special effort to furnish you equipment, haven't they?

Mr. Reheis: I guess they have.

Examiner Mackley: Now take railroads in general, take these other shippers, that are served by the Terminal Railroad Association, do they have that trouble in getting cars?

Mr. Reheis: We had to wait as high as four days for a car in the Terminal yards, had to bring them from the east side.

Examiner Mackley: In the general situation around St. Louis, it is not an uncommon thing for any shipper to have to wait for a car sometimes?

Mr. Reheis: I think it is very unreasonable for a shipper to have to wait four days for a car when he has got to compete with other markets that can get a car out on the same day, and we have to wait four days.

Examiner Mackley: But that was not peculiar to your yard, other shippers in St. Louis had had the same thing happen sometimes.

Mr. Reheis: Possibly they did.

Examiner Mackley: Now, as you stated, to make a long story short, did the fact that this property was transferred to Mr. Busch, and that the Iron Mountain after that had no access to your yards, have anything to do with you taking your business away from the Iron Mountain and giving it to the Manufacturers Railway, bearing in mind that you did not know what kind of service the Manufacturers Railway would render you—as you only had the promise?

Mr. Reheis: No, it did not. We were approached by them
625 saying that they would like to have our business, they were coming down there and promised they would give us good service, and on the strength of that we made a deal with them.

Examiner Mackley: Would you or would you not say then, speaking generally and without reference to the Manufacturers Railway, that the service of the Iron Mountain was unsatisfactory?

Mr. Reheis: I think I have made myself plain on that. As I said before, we had to wait several days for cars at times and in a great many cases.

Examiner Mackley: You made your explanation in this way, Mr. Reheis, from the standpoint of what the Manufacturers Railway said they would do for you, but you had no assurance that they could carry out those promises.

Mr. Reheis: That is a chance we had to take.

Examiner Mackley: That is a chance you had to take.

Mr. Reheis: They have carried them out to our entire satisfaction.

Examiner Mackley: But, at the time that you took your business away from the Iron Mountain, you didn't know whether they could or not. Now, if you had not had these promises made to you and you were just offering them business down there, the same as any other shipper in St. Louis would do on the Terminal Railway Association's rails, would you consider that was unsatisfactory service, taking it as a whole, on the Iron Mountain?

Mr. Reheis: Sometimes it would handicap us if we had to wait three or four days for cars, and if we were obliged to haul it down to the Wiggins yards, it would naturally cost us more to handle our lumber, and besides, we would naturally lose a lot of business,
626 because whenever we get any business it means immediate shipment.

We ship over the C. & A., Wabash and Burlington, no one road gets the bulk of our business. During the last six months we have made a great many shipments to Keokuk over both the Burlington and Wabash. We ship to points in Indiana, Illinois and some to Michigan.

Louis P. Groffman recalled and testified:

I have prepared a statement showing the number of cars handled in and out of our plant for the years 1906 to 1912 inclusive, by months. This statement shows that during the year 1906 we handled in and out 133 cars; in 1907, 185 cars; in 1908, 186 cars; in 1909, 154 cars; 1910, 214 cars; 1911, 328 cars, and for eight months, 1912, 486 cars. The Manufacturers Railway Company commenced to render our service in 1910. During the year 1909 the total number of cars in and out was 154 cars and for eight months of 1912 we handled in and out 486 cars. In other words, during the eight months of 1912 we handled three times the number of cars that we handled during the entire year of 1909.

(This statement offered and introduced in evidence as Complainant's Exhibit No. 62.)

G. F. Moore, resuming, testified:

There is a decided advantage from a railroad point of view in handling promptly the cars containing in-bound freight, an advan-

tage that is not gained in the handling of a car for an out-bound movement. When a railroad has an in-bound movement, from purely selfish motives it will rush that car through in order to have the equipment released and to save car rentals on it, while, if it is an out-bound movement the railway feels that it is going to
627 get it anyway and it will wait its convenience before it will set it in and will give preference to the movement that releases the cars and thereby decreased its expenses.

I think the improvements made by the Manufacturers Railway Company on the property leased to the Eau Claire branch of the St. Louis Lumber Company, of which Mr. Reheis is president, were fully set forth at the second hearing. We began by acquiring from the Iron Mountain all trackage that it owned on the property. We then acquired from it an assignment of the city franchise, making the Barton street switch coming off the Iron Mountain's Barton street track, just east of Second street from the switch point to the end of the crossing, the property of the Manufacturers Railway. This track is no longer the property of the Iron Mountain and has not been for a year. We use this track for delivering back to the Iron Mountain any system cars made empty in this lumber yard, that is, this track is now used in a measure as an interchange track. We did not think that the track we secured was up to our standard. We made it so and added to it a switch from near Lami street, entering the property near the corner of Second and Lami, verging to the southwest and there connecting with the track that we had acquired from the Iron Mountain, and out of this lead (indicating) we threw two spur switches terminating them so as to clear the old Iron Mountain track which entered the property near the corner of Barton and Second streets.

J. D. WATSON testified:

I am the same Mr. Watson who testified at the January hearing. Since the hearing of January, 1911, at the suggestion of the complainants, I have prepared certain statements to be introduced as exhibits. I prepared a statement showing the movement of
628 beer from St. Louis to points in the Southeastern territory, such points as Memphis, Atlanta, Selma, etc., on the basis of the minimum weight, showing the rate, authority for the rate, the gross revenue, the mileage, the rate per ton per mile gross, also showing the allowances and the deductions made for Terminal services at St. Louis and the revenue per ton per mile net.

(This statement offered and introduced in evidence as Complainant's Exhibit No. 63.)

The Exhibit shows five commodities representing beer, and a corresponding commodity, soap, and a lower rated commodity, brick, also cement and sewer pipe. It indicates the movement to Memphis, Nashville and Birmingham. These are moving commodities and this statement shows the gross revenue for a minimum carload of each of the commodities according to the tariff now in effect. It also shows the allowances and to whom paid and the authority therefor.

The gross revenue per ton per mile, including the allowances and the net revenue per ton per mile, deducting the allowances for the cars upon the minimum weight basis. This is explained for the reason that the net revenue per ton per mile will differ with cars loaded in excess of the minimum weight.

This statement shows that on a car of beer moving from the plant of the Anheuser-Busch Brewing Association at St. Louis, Missouri, destined to Memphis, Tennessee, via the Louisville and Nashville, the gross revenue per ton per mile is 6.57 mills and that the net revenue per ton per mile is 4.6 mills. That on a car of brick moving from the plant of Evens-Howard Fire Brick Company, at Howard, Missouri, to the same destination and over the same route, that the gross revenue per ton per mile is 4.1 mills and the net revenue
629 per ton per mile 2.67 mills. That on the beer shipment the total allowance absorbed by the carrying lines is $11.50, including allowances at both St. Louis and Memphis, and that on the carload of brick the total allowance is $14.00. This including the allowance at both St. Louis and Memphis.

The allowance at St. Louis on this carload of brick is $8.00 for the minimum car of 40,000 pounds.

I am familiar with the Christy plant of the Laclede Fire Brick Company. It is located on the tracks of the Iron Mountain. I think it is exclusively served by the Iron Mountain. In a general way and from observation, I am familiar with the physical plan of this plant. I should say that this plant is more than a mile from the Iron Mountain main line. I think they have four tracks in this plant, I know they have two regular loading tracks and that they switch from one to the other. And the absorption on a carload of brick or tile moving from this plant to Memphis, Tennessee, would be the same as on a car from the Evens-Howard Fire Brick Company and the rates would be the same.

According to our absorption tariff the switching charges of the different terminal lines in handling a car from that plant to our rails would be absorbed.

It is a fact that at this plant brick and tile are loaded in mixed carloads; that is, a car loaded with part brick and part tile, the brick kilns at this plant being located on one side of the plant while the tile kilns are located on another side of the plant. It is true that cars are placed at the brick kilns and there partly loaded with brick and then switched to the tile kilns, where the load is completed with tile. The tariffs of the Iron Mountain Railroad provide for that inter-plant movement, the charge being $1 per car. This charge of
$1 per car for this inter-plant movement at the Christy plant
630 is identical with the charge made by the Manufacturers Railway Company in the handling of a car from one part of the plant of the Anheuser-Busch Brewing Association to another part of the same plant.

The character of the service rendered by the Iron Mountain for the Christy plant is the same as the service rendered by the Manufacturers Railway for the Anheuser-Busch plant, and in my opinion, if the service performed for the Christy plant is plant facility serv-

ice, then the service performed by the Manufacturers Railway for the Anheuser-Busch Association is plant facility service; that is, if one service is plant facility service, the other must be plant facility service. Both lines make a like service and make a like charge for the same and they both publish the charges in their tariffs. All the St. Louis tariffs that I examined indicate that this $1 charge is a universal charge for inter-plant service.

The Cotton Belt does not absorb this $1 switching charge, and I have not found from the absorption tariffs of other lines that any provision is made for the absorption of this charge. It is a charge that would be assumed by the shipper, being a part of the loading expense. This service is no part of the transportation service, and therefore the railroads are not asked to absorb that charge in any form.

I have prepared another statement similar to Exhibit 63. (This statement offered and introduced in evidence as Complainant's Exhibit No. 64.) This exhibit contains the same information as contained in Exhibit 63, covering shipments destined to Atlanta, Ga.; Chattanooga, Tenn., and Selma, Ala., and shows the shipments moved over a two-line route. It shows that the gross revenue per ton per mile on a car of beer from Anheuser-Busch, St. Louis, Mo., to Atlanta, Ga., via Louisville and Nashville, Nashville,
631 Tenn., and the Nashville, Chattanooga and St. Louis, is 1.25 cents per ton per mile, and that the net per ton per mile is 1.09 cents. The gross per ton per mile on a car of brick is 5.25 mills and the net per ton per mile 4.11 mills. This exhibit shows the switching charges and absorptions as shown on the previous exhibit.

I have prepared a further statement along the same lines. (This statement offered and introduced in evidence as Defendant's Exhibit No. 65.) This exhibit shows the same information as the previous exhibits, covering shipments destined to Southwestern territory, the points selected being Little Rock, Texarkana, Shreveport and Texas common points for the same commodities from the same firms. The commodity of soap shown on these exhibits destined to the Southeastern territory are rates on any quantity, the same rate applies whether the shipment be L. C. L. or carload.

The rate per ton per mile is a factor taken into consideration in establishing a given freight rate, and traffic men and tariff men have constantly in mind the average per ton per mile earnings of their lines, so that the earnings per ton per mile on a given commodity reflect in a general way, at least for comparative purposes, whether or not that given rate is a profitable or an unprofitable rate. For instance, if the average per ton per mile revenue of the St. Louis and Southwestern Railway was three-fourths of a cent per ton per mile, and the commodity in question produced a revenue per ton per mile of 1.31 cents, I would consider that commodity as one earning revenue, and if the commodity moved in quantities I would consider it good business.

It is true that the railroad traffic man is more interested in his schedule as a whole than he is interested in a particular rate on

some particular commodity; that is, the condition of your
632 entire traffic is the final analysis, or rather the final test as to whether you are earning money or not. It determines whether or not one is operating at a profit or at a loss. However, it is true that some rates are profitable and some rates are not profitable. The commercial conditions that surround the particular commodity control rate adjustments, so that the railroad handles some commodities at a per ton per mile less revenue than the average, on the same principle that a grocer deals in sugar at a loss.

At the previous hearing I testified briefly with reference to the general switching situation in the St. Louis terminals and as to the charges made by the various lines for the service performed. Since that hearing I have made a further investigation, not only at St. Louis but at other terminal points. From an investigation of the tariffs at St. Louis I find that the Union Depot line of the Wabash Railway compares favorably, both as to distance and cost of service, with that of the Manufacturers Railway. The Wabash's minimum charge is one cent per hundred pounds, minimum 50,000 pounds, or $5. Its service from Vandeventer avenue to Twenty-second street, where they connect with the Terminal, is a distance of about 17 blocks and represents about the distance from the connection of the Manufacturers Railway with the Wiggins to the plant of the brewery. The operating conditions are over streets, as with the Manufacturers Railway. I would judge that the Manufacturers Railway cost of maintenance would be as much as that of the Wabash, if not more, having in mind the very expensive viaduct which is used by the Manufacturers Railway.

In the case of the Iron Mountain or Frisco System, for their serv-
ice in the western part of St. Louis the charge is universally
633 1½ cents and 2 cents per hundred pounds, this charge being on competitive traffic, while on non-competitive traffic they charge one cent per hundred pounds, indicating that their service on account of other lines is about an average of one cent per hundred pounds, whereas on competitive traffic they charge more. To the points where the tracks are used jointly by the Wabash and Rock Island, the charges are considerably in excess of one cent per hundred pounds, minimum 50,000 pounds, these charges being as high as 1½ cents per hundred pounds, minimum 80,000.

In examining tariffs at other terminals, for instance, the Chicago Great Western tariff provides a minimum charge of one cent per hundred pounds, minimum 50,000 pounds, which appears to be their switching rate at all of their terminals, and conclusively shows that it only switches from connections to industry tracks. It does not give connecting lines the use of their team tracks. At Chicago the minimum charge is $9 for a similar service.

I have here C. M. & St. P. tariff, I. C. C. No. B-3425. This tariff provides for internal switching, the same service we were discussing a few moments ago in regard to the Laclede-Christy plant and the charge of the Manufacturers Railway, that is, from one track to another track of the same industry. The Milwaukee's charge is $2 for this service. I also find there is a uniform switching rule in

regard to weighing at St. Louis. Where the service is performed over the scales of the Railway Company the charge is $1. If the service is performed over privately owned scales, the charge is 25c. This charge seems to be a uniform one as shown in Leland's switching tariff.

Taking into consideration the tariffs which I have ex-
634 amined relating to the switching situation in St. Louis and other terminals, I still am of the opinion that the charge of $4.50 a car by the Manufacturers Railway is a reasonable charge. It is a lower charge than the average charge for similar service in St. Louis. It is much lower than the charge in Chicago for switching service, regardless of the distance of the switch.

I am familiar with the plant of the Polar Wave Ice and Fuel Company located on the tracks of the Wabash Railroad at or near Newstead avenue. This plant has tracks into its ice house and into its coal sheds but I cannot give the detail as to the location. This plant is located on the joint Rock Island-Wabash Union Depot line in rate district No. 45, and the charges are shown in Leland's tariff No. 924. The charge from this rate district No. 45 to the connection with the Terminal Railroad as per item 774, page 60, is one cent per hundred pounds, minimum 50,000 pounds. The charge from the same plant to the C. B. & Q., via Ferguson and Wabash, is 1½ cents per hundred pounds, but to all other lines it is one cent per hundred pounds. I haven't the cross-river tariff with me, but assuming that a car of ice is loaded at this plant destined to Memphis, via the same route that the car of beer traveled to Memphis, and that the cross-river charge is 1½ cents with minimum of 40,000 pounds, the cross-river charge on a car from the plant of the Polar Wave Ice and Fuel Company would be $6, the Wabash's charge would be $5, and the charge at Memphis would be $2, making a total charge of $13, and according to tariffs, these charges would be absorbed by the line carrier, the same as on the car of beer and other commodities set forth in these Exhibits. I would say that the Wabash would perform a switching service for a distance
635 of a mile and a quarter, or perhaps a mile and a half.

A car from eastern territory destined to the Christy plant of the Laclede-Christy Clay Products Company located on the Oak Hill branch of the Iron Mountain, the Iron Mountain would haul the car from its connection with the Terminal Railway, a distance of about 2½ miles, and for this service the Iron Mountain would charge 2 cents a hundred pounds, and the line haul carrier would absorb the switching charge of the Iron Mountain provided the shipment was competitive.

Cross-examination by Mr. Colston:

My position with the Cotton Belt and the nature of my duties are now the same as they were at the previous hearing. These Exhibits which have been introduced set forth the allowances which are shown in the tariffs. In case of the shipment via the Louisville and Nashville to Memphis, these Exhibits do not take into consideration the Henderson bridge toll. The allowances shown in the

Exhibits are for terminal allowances and not for line allowances. No allowances or deductions have been made on account of mileage paid on refrigerator cars. No allowance other than terminal allowances are shown in these Exhibits. These Exhibits are compiled from the tariffs and are statements covering business that we know to have actually moved. These statements show what the tariffs set forth and what the revenue would be under the conditions. This is true of all these Exhibits.

Yes, I have had operating experience. I have been working for railroads for something like 32 years, and fifteen years of that time has been spent in the operating machinery and store departments of railroads. I do not think they have found anyone

636 able to determine the cost of a movement in the Christy plant and the cost of a movement by the Manufacturers Railway. The opinions expressed by me as to comparative costs are based on common knowledge that one has from observation.

Mr. Colston: Well, what is that common knowledge that you would have from observation that would enable you to express an opinion in that regard?

Mr. J. D. Watson: The distance actually handled of the commodity by a train crew or switch crew would have a great deal to do with the cost. The time required to perform the service would have a great deal to do with the cost, and using those two elements alone—I based my opinion on those two elements alone.

Mr. Colston: What is the distance the cars are moved in the Christy plant?

Mr. J. D. Watson: I should say about three-fourths of a mile.

Mr. Colston: About three-fourths of a mile. What is the distance that the cars are moved by the Manufacturers Railway?

Mr. J. D. Watson: In some cases it is moved about half a mile, in some cases probably moved a quarter of a mile. The Manufacturers Railway can probably handle ten cars where the other people can handle 20 or 25, and that may be reduced in practice. In fact, I recall very distinctly seeing an engine having some difficulty—a large engine it was—in handling five cars on one of the tracks of the Manufacturers Railway.

Mr. Colston: In this interior switching they handle 20 cars at a time, this switching for which you say $1 is paid at the Christy plant?

Mr. J. D. Watson: No, I simply use these figures for comparative purposes. I presume they move one car at a time.

637 Mr. E. E. Watson: Let me interrupt you a moment. Mr. Watson in his testimony in comparing the interplant switching at the Christy plant, for which a charge of $1 is made, and the service of the Manufacturers Railway at the Anheuser-Busch plant, for which it charges $1, his statement was that the service was a similar service and a like service, that if the service of the Christy plant was plant facility service, then the same service for the Anheuser-Busch plant was plant facility service, and vice versa. He was making no comparison as to the cost of the service at one plant or the other.

Mr. Colston: In what respect did you mean those services were similar services if you didn't have reference to the cost or the difficulty.

Mr. J. D. Watson: Probably your difficulty would be cleared up if you will use the word "like" instead of "similar." They are like services.

Mr. Colston: You simply mean both of them are interplant service.

Mr. J. D. Watson: Both of them are inter-plant service. The benefit to the shipper is the same in both cases.

Mr. Colston: That there is a movement within the plant?

Mr. J. D. Watson: Yes.

Mr. Colston: And that is the nature of the similarity to which you have referred?

Mr. J. D. Watson: Not altogether the nature of the similarity.

Mr. Colston: What other circumstances did you have reference to in stating that they were like services?

Mr. J. D. Watson: Well, what you are trying to determine, as I understand it from the statements previously made, is whether or not the services for the Laclede-Christy people rendered by
638 the Iron Mountain is the same as the service for the Anheuser-Busch people rendered by the Manufacturers Railway, and my statement was that the services are similar, are alike; that is, that the Laclede-Christy people receive the same privileges as the Manufacturers Railway grant the Anheuser-Busch people and for the same purpose. It is immaterial to the Laclede-Christy people or the Anheuser-Busch people what the cost of the service is so long as they get it and at the same price, which seems to be the uniform price.

Mr. Colston: I tried to get you to say, Mr. Watson, that that was the nature of your comparison, that you meant by saying they were like services that each service was a movement from a point in a plant to another point in a plant and that that was the nature of the comparison. If there are any other circumstances which you considered in saying they were like services, please state them now. * * *

Mr. E. E. Watson: Mr. Colston, may I ask a question here to see if I cannot get this thing straight?

Mr. Colston: Why, certainly.

Mr. E. E. Watson: Mr. Watson, this interplant service of which you testified at the Christy plant was the moving of a car partly loaded at the brick kiln to the tile kiln, where loading was finished, for which service the Iron Mountain charges $1. The service performed by the Manufacturers Railway for the Anheuser-Busch Brewing Association was the moving of a car, for instance, from the rice house, where the car was partly unloaded, and thence moved to the brew house, where unloading was completed, for which service the Manufacturers Railway Company charged $1. You were simply comparing the character of that service and saying that the
639 service performed at the Christy plant and the service performed by the Manufacturers Railway at the Anheuser-Busch plant were like services?

Mr. J. D. Watson: That is all.

Mr. E. E. Watson: If one is a plant-facility service the other is a plant-facility service?

Mr. J. D. Watson: That is so.

Mr. E. E. Watson: That is all you intended to say?

Mr. J. D. Watson: Absolutely all. I re-stated it four or five times. I cannot figure how I can make it any clearer.

Mr. Colston: That is the meat of the whole thing as to what is a plant-facility service. Now you stated that you believe it is a plant-facility service. What is a plant-facility service?

Mr. J. D. Watson: I said if one was a plant-facility service the other was a plant-facility service. I did not undertake to describe what a plant-facility service is. Now, if you want me to give you my idea as to what a plant-facility service is I will tell you.

Mr. Colston: What is a plant-facility service?

Mr. J. D. Watson: A plant-facility service, in my opinion, is a service rendered by a plant for its own purposes and has no relation whatever to the transportation service.

Mr. Colston: Well, now, do you make any distinction between the two movements that I differentiated just now in connection with the plant-facility service, or do you think they are exactly the same kind of service—a movement to load, for instance, and a movement from one point to another within a plant in the process of conversion and manufacture?

Mr. J. D. Watson: Well, as far as the actual service between points within the plant is concerned, if for plant purposes, it would be plant-facility service. If it is for the purpose of completing the
640 load for transportation, or completing the unloading of a car which has received transportation service, then I think it is not plant-facility service.

Mr. Colston: Then you are not of the opinion that the services performed at the Christy plant are in every case the same with respect to their being plant-facility service or not, the same as the service performed by the Manufacturers Railway for the Anheuser-Busch Brewing Association. Is not that true?

Mr. J. D. Watson: I testified as to an exact specified movement. I did not testify as to all the service rendered by either the Iron Mountain at the Laclede-Christy plant or by the Manufacturers Railway at the Anheuser-Busch Brewing Association.

Mr. Colston: And your answer then had reference to these specific movements only?

Mr. J. D. Watson: Had reference to the internal switching service for the purposes specifically described in the question.

Redirect examination:

Notwithstanding the fact that I have not based these exhibits on the actual movements of any particular car, the fact still remains that if this traffic was profitable to the Louisville & Nashville they would handle it—in fact, they must handle it under their tariffs. If they refuse to carry such a shipment the shipper would have a cause of action against them.

According to the Iron Mountain tariffs, if at the Christy plant a car was loaded with clay and moved from the clay pile to the tile kiln and there unloaded and manufactured into tile, and this same car was loaded with an outbound movement, the charge would still be $1 a car for the handling of that clay in the process of manufacture, so that I should say that the same condition obtains at the Christy plant that obtains at the Anheuser-Busch plant, and
641 if the one is plant-facility service the other is plant-facility service, and this without saying either is plant-facility service.

Recross-examination.

By Mr. Colston:

I do not know how many cars of clay were handled in the interplant service for the Christy people during the last year. I do not know that any of it moved, and I do not know that any hops were moved at the plant of the Anheuser-Busch. At this point I would like to read into the record the actual provision for that interplant service that we have been talking about, so that it will be understood:

"When cars are placed at one point and ordered moved to another point in the same industry, a switching charge of one dollar per car will be made."

It seems to me that under that tariff you can do almost anything you want to in regard to moving cars between points in the same industry and for which you will pay $1 per move. This is taken, from Missouri Pacific Tariff I. C. C. 9481, item 16, page 2.

Redirect examination:

Whether this beer moved in a privately owned car, or whether it moved in a box car or in a refrigerator car belonging to another line there would be a cost to the Louisville and Nashville Railroad for handling that car; that is, the Louisville and Nashville would pay mileage or per diem to the owner of the car, so that that cost would be a constant cost remaining within the movement, whether the equipment be privately owned or railroad owned. These conditions are clearly shown in the next shipment of brick. In the handling og brick the L. & N. would pay per diem on the foreign car, and still further, if the movement was in a car owned by the L. & N. Railroad, they would be obliged to take into their cost the interest on the value of that equipment.

642 Recross-examination:

Mr. Colston: You say the cost is constant; rather you assented to a question of counsel involving that idea. Do you know what the comparative cost of the L. & N. is for handling a shipment from here to Memphis in a refrigerator car which must be returned and the cost of handling it in a per diem car?

Mr. J. D. Watson: Yes, I should say that the difference would be the cost of hauling the empty car back from Memphis, providing

it was not loaded with empty beer packages, the mileage of the car in both directions, whereas on the southbound direction on brick or any other commodity that did not require a private car you would only have the use of the car one way.

Mr. Colston: You do not know the relative earnings of a refrigerator car such as that in which that beer would be handled per day and the earnings of a car on the per diem allowance, do you?

Mr. J. D. Watson: Well, you probably base that question on the assumption that all beer moves in refrigerator cars. That is not true, you know.

Mr. Colston: If it should be shown that the cost per day to the Louisville and Nashville Railroad Company for a St. Louis Refrigerator car is between 70 cents and $1, while the cost to the Louisville and Nashville Railroad for a refrigerator car of another line similar to its own refrigerator cars, which handled under a per diem is 30 or 35 cents per day, according to the period of the year, then it would not be true that that element is constant, would it?

Mr. J. D. Watson: No, it would not be true in that particular as to beer, but it would be true as to brick, or it would be true as to beer loaded in cars other than refrigerator cars, and I wanted to call your attention to the fact that there are a number of re-
643 frigerator cars besides the refrigerator cars owned by the St. Louis Refrigerator Car Company which are not operated on a per diem basis that are operated on a mileage basis.

Mr. Colston: That is exactly the point I wanted to bring out to show that your answer that that cost was constant was an error.

Mr. J. D. Watson: My answer that that cost was constant had no relation to beer, but had relation to other commodities, there being a difference in the movement of beer.

ARTHUR L. HAMPSON testified:

I am a photographer, making a specialty of outside work. I took a number of photographs on Monday of this week, September 23, and on Tuesday, September 24, 1912. These photographs were of various switch tracks and plants in St. Louis. The first photograph is a photograph of a switch track leading into the warehouse of the Crane Company located at Twelfth and Gratiot streets. The view is looking southwestwardly across Gratiot street from the warehouse with my back toward what is known as the Mill Creek Valley Road.

(This photograph offered and introduced in evidence as Complainant's Exhibit No. 66.)

I have another photograph representing the interior of Crane Company's warehouse, the exterior of which is shown in Exhibit 66.

(This photograph offered and introduced in evidence as Complainant's Exhibit No. 67.)

This portion of St. Louis near Twelfth and Gratiot streets is in the railroad center and in St. Louis is known as "away down town."

I took a photograph of the Polar Wave Ice & Fuel Company
644 plant located on the Wabash tracks at Newstead avenue.

(This photograph offered and introduced in evidence as Complainant's Exhibit No. 68.)

In taking the photograph Exhibit 68 I was standing on a high bank on the south side of the Wabash Railroad track looking northeastwardly across the Wabash main line into the plant of the Polar Wave Ice & Fuel Company. This photograph, Exhibit 68, shows the three leads from the Wabash tracks running into the Polar Wave Company's plant and into its coal yards. The Polar Wave plant consists of two divisions, extensive coal yards on the east end of the plant, and an ice plant and storage warehouse on the northwest side of the plant.

I have another photograph. (This photograph offered and introduced in evidence as Complainant's Exhibit No. 69.) In taking this photograph, Exhibit 69, I was standing on a coal pile inside of the coal yards of the Polar Wave Ice & Fuel Company and looking down one of the openings between its buildings, that is, looking northwardly along some of its spur tracks which serve its coal and ice buildings.

I have another photograph, being a third picture of the Polar Wave Ice & Fuel Company yard tracks. (This photograph offered and introduced in evidence as Complainant's Exhibit No. 70.) In taking this photograph, Exhibit 70, I was standing north of the Polar Wave Ice & Fuel Company's plant and across the public street. The photograph is looking southwardly between two of its buildings and beyond the Wabash Railroad, the track shown in this exhibit being the spur tracks of the Polar Wave Ice & Fuel Company located within its plant.

I have still another photograph, being a photograph of the
645 Christy plant of the Laclede-Christy Fire Clay Company, situated on the St. Louis, Iron Mountain & Southern Railway. (This photograph offered and introduced in evidence as Complainant's Exhibit No. 71.) In taking this photograph, Exhibit 71, I was standing on the top of one of the plant sheds, being one of the northernmost sheds in that plant, and the photograph is looking in a southwestwardly direction. It is a fact that when taking this photograph I observed to the left of the view shown in this photograph and to the left of the shed on which I was standing another railroad spur track running down to the left, so that this photograph does not show all the spur tracks or switch tracks which run into this plant from the Iron Mountain connection. These other tracks will appear in the next photograph. The tracks shown in this photograph, Exhibit 71, are all within the plant of the Laclede-Christy Company.

I have another photograph which is a photograph taken from the same shed of the Christy plant of the Laclede-Christy Fire Clay Company. (This photograph offered and introduced in evidence as Complainant's Exhibit No. 72.) In this photograph I was looking in the opposite direction, that is, in a northeastwardly direction along the railway track which leads into the plant. The additional spur track leading into this plant of which I spoke is one which I had noticed and which enters or leaves the lead at about the point where

the car is standing on the sidetrack, and is the one shown in this photograph, Exhibit 72, and this track proceeds back of the shed which appears in the right-hand side of this photograph, Exhibit 72.

A. L. BROWNE testified:

I have resided in St. Louis 25 years and am the traffic representative of Fairbanks Company, St. Louis. Both the St. Louis, Iron Mountain and Southern and the Manu-
646 facturers Railway, perform our switching service. On the St. Louis, Iron Mountain and Southern we have two unloading and loading tracks with an extra track that we can use for unloading only. The Manufacturers Railway Company has two tracks for loading and unloading in our plant. We have had these facilities of the Manufacturers Railway for about three years. Prior to that time we had the facilities of the Iron Mountain only, so that the facilities that are now furnished us by the Manufacturers Railway Company are new facilities, that is, they are additional tracks furnished us by the Manufacturers Railway Company, and these additional tracks are of benefit to our people.

Our business has grown so that we needed better facilities, better service and equipment. We needed to expedite the handling of our inbound and outbound business. In the handling of our inbound shipments, whether they be received by the Iron Mountain or by the Manufacturers Railway, it is necessary to spot cars. We have different loading doors and receiving doors, both on the Iron Mountain and the Manufacturers. No additional charge is made either by the Iron Mountain or the Manufacturers Railway for this spotting service. If, for instance, we have two or three cars placed on the Iron Mountain tracks and a fourth car is received and it becomes necessary to pull these three cars in order to spot the fourth car, the Iron Mountain performs this service and makes no charge for the service. The Manufacturers Railway performs the same service for us.

In the handling of our business we have a class of service where it is necessary to partly unload a car at one warehouse door and then to switch that car to another track to complete the unloading.
647 Both the Iron Mountain and the Manufacturers perform this sort of service. The service rendered by both companies is favorable. I would not say that the service of one is any better than the service of the other. So far as service is concerned, they are on a parity. There is no class of service that the Iron Mountain performs for us that is not performed by the Manufacturers.

Cross-examination by Mr. Colston:

The advantages that I speak of as arising from the building of the Manufacturers Railway line into our plant are the advantages which arise from the extension of the plant facilities in our plant; that is, the increase in the number of tracks.

Redirect examination:

If the Manufacturers Railway Company had not given us these new facilities it would not have been possible for the Iron Mountain

to have constructed these tracks. We could only have this additional service at the hands of the Manufacturers Railway Company.

Examiner Mackley: While the Iron Mountain could not have given these particular facilities, could they have given you all necessary facilities in any way that you require now and which you now have in connection with the Manufacturers Railway?

Mr. Browne: No, sir.

Examiner Mackley: Why not?

Mr. Browne: Why, they have not got the room. Our business had increased until we got so many cars in there that we had to have other facilities to bring them in there to expedite our manufacturing and the shipping.

Examiner Mackley: And they had no room on which they could build facilities?

Mr. Browne: No, sir.

648 Examiner Mackley: To accommodate your growing business?

Mr. Browne: No, sir.

Recross-examination by Mr. Colston:

Our plant is located from Convent street to La Salle street, between Third and Second streets. It would have been no benefit to us even though the Iron Mountain Railroad had built up Convent street. Our building is so located that the Iron Mountain would have to come into the south a considerable distance. I think the question of putting in other facilities was up with the Iron Mountain some time ago, but it was dropped. The Iron Mountain is now on First street, and our plant fronts on Second street. The Iron Mountain has no tracks running south of our plant toward Second street. The Iron Mountain has extensive yards about Miller street running over toward Kosciusko, but that is too far south.

G. F. Moore, resuming, testified:

Examiner Mackley: How was this extension made, Mr. Moore, to accommodate the Fairbanks Company? Did the Manufacturers Railway Company buy up property there to put the tracks on, or is it by the lease, or how?

Mr. Moore: The Manufacturers Railway Company had a franchise on Second street through from its main line track, a spur running through what is known as the Bradbury Marble Works into the property owned or leased by N. K. Fairbanks for this track. That which appears on private property Bradbury and Fairbanks paid for. Then the Manufacturers Railway Company obtained from the City a permit under its franchise from the Board of Pub-

649 lic Improvements to construct and operate a spur track along the sidewalk just east of N. K. Fairbanks, and put in a spur track there and operate that on public property, giving them a track to the south of them and a track to the east of them, which is the only possible track that could be thrown in there on account of the curvatures that would be required at the hands of the Iron Moun-

tain. They could not make a curve so as to get a track into that property.

Examiner Mackley: Your Second street main line is right out in the middle of the street?

Mr. Moore: In the middle of the street.

Examiner Mackley: Then on the west side of the street you ran this spur up to Fairbanks?

Mr. Moore: Up to La Salle street.

Examiner Mackley: Up along the west side of Second street?

Mr. Moore: Yes, sir.

Examiner Mackley: That is one of the facilities that the Manufacturers Railway Company affords to Fairbanks Co.?

Mr. Moore: Yes, sir.

Examiner Mackley: That is the improved facility. Now where is the southern spur?

Mr. Moore: The southern spur begins about at the intersection of Merchants street and runs northwest, curving through the Bradbury Marble Company's yard, and then at a tangent directly west along the big oil tanks, or grease tanks, I don't know which, of N. K. Fairbanks.

Examiner Mackley: Is that at the southern end of their plant?

Mr. Moore: Yes, sir.

Examiner Mackley: Where does the Iron Mountain come in to Fairbanks plant?

650 Mr. Moore: The Iron Mountain has tracks along the northerly property limits running east and west.

Examiner Mackley: At the north end of the plant?

Mr. Moore: Yes, sir.

Examiner Mackley: What street is the Fairbanks on?

Mr. Moore: Fairbanks runs from Convent to La Salle with their eastern front on the west line of Second street.

Examiner Mackley: Where is this Iron Mountain track down here in Second street?

Mr. Moore: The Iron Mountain tracks come up through here (indicating on map) and around through here (indicating on map) from First street.

Examiner Mackley: It diverges from First street between Convent and La Salle?

Mr. Moore: I think it starts just out of Convent and curves up between Convent and La Salle, yes, sir.

Examiner Mackley: Has not the Iron Mountain a track on Second street down south of La Salle?

Mr. Moore: No, sir. This is the most westerly extension of the Iron Mountain track on Barton street, running almost to Broadway, but it would be impossible for them to get in here (indicating on the map).

Mr. Kirby: What do you mean by here?

Mr. Moore: Into the south end of the Fairbanks plant, because they would have to cross through permanent improvements here at the Laclede Gas Company between Lesperance and Convent, First and Second, in order to make a curve that would go in there.

Examiner Mackley: Is there any track on the Iron Mountain that has been abandoned by this lumber company? Where is that lumber company located?

651 Mr. Moore: That is around here at Barton street. It is not abandoned. It was sold to the Manufacturers Railway Company.

Examiner Mackley: They cannot connect up to Second street to the southern end of the Fairbanks plant from Barton street?

Mr. Moore: We have a franchise on Second street from our track and they would have to secure a city franchise from Barton street up about a mile to Convent street before they could get to the Fairbanks, and it would cost them a whole lot more money than the Fairbanks establishment.

Mr. Kirby: Could they curve in from the north?

Mr. Moore: On account of the permanent improvement here at N. K. Fairbanks, between La Salle and Convent and the Wiggins and right-of-way of the Iron Mountain, it would be impossible to throw a working curve from their extension off of Convent, between Convent and La Salle, to either the eastern line of Fairbanks property or the southern side of Fairbanks property.

Mr. Colston: Mr. Moore, what occupies the square between Convent and La Salle and Second and Third streets, which is marked No. 46 on this map of the Manufacturers Railway which has been filed?

Mr. Moore: That is city block 46. There are a number of residences and vacant property lying south of the Iron Mountain and north of Convent street, but not sufficient to enable the Iron Mountain to throw a curve and hit the Fairbanks property, going south.

Mr. Colston: Could not the Iron Mountain make a curve of practically the same degree of curvature as the curve by which they enter that block from First street and again get into Convent street and run along by the Fairbanks place?

Mr. Moore: If Fairbanks wished a track up Convent street
652 and the Iron Mountain secured the proper franchise by buying property south of Convent street, which is the Laclede Gas Company, substantially improved, they could construct a curve and go west on Convent street and supply the N. K. Fairbanks two different buildings there. You have overhead work along Convent street and I do not think the track there would be of any service to them.

Mr. Colston: Having gotten on Convent street by purchasing property in city block 46, to which we have referred, they could curve into Second street and around, getting a franchise for the use of the sidewalk such as you obtained, they could have served with that same track, could they not?

Mr. Moore: No, sir.

Mr. Colston: What engineering difficulty is there in the way of that?

Mr. Moore: There is not sufficient space to get the curve and to make such a curve as would take them on the sidewalk where our track is.

Mr. Colston: What degree of curvature would be required for a line running up Convent from First to reach Second street by going through part of city block 46?

Mr. Moore: Second street is already occupied by tracks there under lawful franchise, and there would be no room on Second street to throw back any other switch, and it could not have been even before the Manufacturers Railway constructed the switch lying east of N. K. Fairbanks between Convent and La Salle.

JULIUS PITZMAN testified:

I live in St. Louis and am a civil engineer by profession. I have practiced my profession in St. Louis since 1859. In connection with my professional work I have done a great deal of surveying
653 of residence, industrial and railroad property in the City of St. Louis and within its switching limits.

We have prepared the estimates and divisions on most of the right-of-way that has been condemned through St. Louis. Statements have been made in consultation with the engineers in charge of the location. During my entire practice here I have been in consultation with the engineers of the railroad companies for the purpose of developing their terminal facilitties in and about St. Louis.

I am a property owner myself and have traded considerably in real estate. I own quite a large amount of real property situated on and along railroads. My practice and my personal experience has given me considerable knowledge of real estate values in and about St. Louis. I have been commissioner to partition and divide over fifty millions of real property in St. Louis. My surveying and platting of property located in various parts of St. Louis has given me knowledge of property values. I am very familiar with the property in South St. Louis, where the Manufacturers Railway is situated. I have known that property intimately long before the Manufacturers Railway was built. I located the corner for the Anheuser-Busch Brewery and surveyed the land down to the river frequently before the war even.

I am familiar with the railroad yards and rights-of-way and sidings which are leased by the Anheuser-Busch Brewing Association to the Manufacturers Railway Company under a lease which calls for a rental to be paid by the Manufacturers Railway Company of $24,000 a year. In my opinion the rental paid for the property and the use which the railway receives under that lease is a low rental. I consider it less than half its rental value. In my opinion the
654 property leased by the Manufacturers Railway, simply including the right-of-way for each track of about 13 feet in width, would contain about 500,000 square feet, fully platted and graded and covered with tracks. Two dollars a square foot would be a very low valuation for that property. That would be a million dollars, and under the terms of the lease the owner is to pay the taxes, so 5 per cent on that would be fair rental for the property, allowing about 1 per cent for taxes and 4 per cent for the money.

This 5 per cent basis on a valuation of a million dollars would be $50,000, which in my opinion would be the rental value of the

property, and I would consider it cheap at that, because while the tracks themselves only contain about 500,000 square feet, in order to utilize those tracks other lands have to be set aside for certain purposes. Warehouses have to be built in order to deliver the freight because often the land itself on which these tracks are laid and the property is worth three times as much. I presume there are at least 33 acres of land upon which these tracks are located, and fully two-thirds of it is used for railroad purposes for the purpose of loading and unloading freight. The estimate that I have given was based simply on the tracks and right-of-way.

This estimate of $2 per foot is without regard to the improvements that were in the railroad yards outside of that particular strip.

The Manufacturers Railway, since its development into a terminal system in South St. Louis, is unquestionably a valuable addition to the terminal facilities afforded to the shippers of St. Louis. It is for the very reason that by the concentration of the railroads in the Mill Creek Valley factories are cut out and warehouses are cut out. The four or five railroads coming into the valley between Chou-
655 teau avenue and Market street leave only the two sides to be used for factory purposes. Factory grounds are very limited and for that reason I think the extension of the terminals through the new territory is of the utmost importance to the City of St. Louis.

Cross-examination by Mr. Colston:

The property which I have been considering as embraced in the lease for which $24,000 rental is paid, I have included every track between Lynch street and Arsenal street and between First street and Thirteenth street, but I excluded from the length of the railroad tracks all those portions of the tracks which are on public highways or alleys, and only included those which are on the property of the Anheuser-Busch Brewing Association or of Adolphus Busch. There is property within that area which is not owned by either the Anheuser-Busch Brewing Association or by Adolphus Busch, so then all the tracks which I considered within that area are located on the property of the Busch-s.

Cross-examination of Mr. G. F. Moore by Mr. Colston:

At page 320 of the record I was examined with reference to an amount of $43,772.91 charged as general depreciation for the fiscal year ended June 30, 1909, and reserved the right to correct my testimony in so far as that amount may not have been finally applied to depreciation. This item appears as journal entry No. 15 of December, 1909, and in the ensuing year was credited to profit and loss. No adjustment in operating expenses was necessary on account of that item. This entire amount was credited to profit and loss. The entry being made direct to profit and loss, it did not affect our operating expense results.

At page 324 of the record of the previous hearing I was asked to explain why our operation showed a greater number of empty
656 cars moved in revenue service than it showed loaded cars moved, and during this present hearing I handed to Mr.

Colston a statement referring to that item, which I have before me. My answer to this situation would be that the figures do not represent an actual count. The actual information would not be of sufficient value to the Manufacturers Railway to justify the cost of keeping a record. It is an estimated number based upon opinions and experiences of our superintendent and the agents handling the business of the Manufacturers Railway from an operating standpoint. I have no reason to place my opinion above that of the subordinates who are entrusted with compiling the statistics as nearly as they could. Therefore, I am inclined to believe that the statement is fairly representative. I have not given this situation very much thought and at this time do not feel qualified to discuss it. I will say this, that if the record requires such information that I will consider it and give the best answer possible in writing, both to the Commission and to Mr. Colston.

On another page of the record I stated that my impression was that we handled more loads than empties in revenue service. I now recede from that. I was probably wrong when I made that observation. It was only an observation.

I wish to further explain that I did not disregard Mr. Colston's request. I took up this matter honestly for investigation as I have other things. I could find no records upon which to base anything. As I say, we did not keep such records. I encountered the persons who prepared these statistics and I heard what each of them had to say as to why the same had been prepared in the way that they were. One of these men, the superintendent, has since died. There

657 is no record that I can elaborate upon and produce any more information than I am giving you now by saying that it is an estimated figure.

It is impossible for me to further explain this matter from our records in a way of answering Mr. Colston's inquiry, that is, no more than has been done in this statement which I have handed him. I thought that ordinarily the number of cars handled empty earning revenue, and the number of loaded cars handled earning revenue, would be about equal; that was my judgment at the time you originally asked the question. Now I think the surplus of empty cars handled earning revenue was defended by my subordinates, understanding that if a car was set on a certain track loaded and made empty and then moved off to another track, that that was the same as finishing the completed movement, and then in a subsequent move made empty they counted that as a movement of an empty car earning revenue, that is, the carrying of that car to a place where it was to be loaded out. That seems to be a reasonable explanation at the time as to why they compiled those figures in that way. I thought it should be about an even break. We have some empty equipment coming to us empty but rarely ever going back without a load, but they had some reasonable explanation that made me think that they probably had arrived at about the correct figure.

Mr. Colston: Now, Mr. Moore, you have not misunderstood me at this time. I am not endeavoring to criticize anything that you have done, criticising your methods of keeping your accounts or rendering

them, I am trying to arrive at the facts. Now I want to know what is indicated by this final report, sworn report of the Manu-
658 facturers Railway, which you have made to the Interstate Commerce Commission, which exhibits an anomalous state of affairs. If it is due to the fact that you have counted an extra movement empty, that is not ordinarily counted as an extra movement —I mean an empty movement under revenue—that is the explanation, then I would understand that for a correct consideration of these figures, the number of empty cars handled earning revenue empty ought to be reduced to at least the figure, or at most, the figure for the number of cars handled earning revenue loaded.

Mr. Moore: What is the difference between them?

Mr. Colston: About 3,400 cars, roughly.

Mr. Moore: Per year. Ten cars a day possible. What I don't know I can't testify to. I frankly tell you I don't know; that figure is estimated and not regarded as very vital by the Manufacturers Railway. There was some question as to whether that was reported right in the cross-examination, Mr. Colston.

It appears from pages 336 and 337 of the previous record that I was asked how long our then serving master mechanic had been in our service, and I was asked to explain the charges for superintendence and maintenance of equipment which showed a total of $3,013.26 for the fiscal year ended June 30, 1911, as compared with the total of $290 for the fiscal year ended June 30, 1909, and as compared with the total of $159.09 for the fiscal year ended June 30, 1910.

Mr. Gregory, the master mechanic, entered the service of our company on July 1, 1910. Prior to securing his services the current reports for about a year were made by our mechanic under the direction of the superintendent. Prior to that time the locomotive equipment was cared for by the master mechanic of the brewery and charges were made against the railroad for that service, and
659 during a part of the year 1909 the St. Louis, Iron Mountain and Southern cared for the locomotive equipment in the way of upkeep and maintenance. Mr. Gregory is still in the service of our company. Mr. Gregory has to do with repairs to cars, that is, when we make repairs he cards them for repairs and checks the repairs that are made. He has charge of all of our equipment, including our locomotives, and we have to repair foreign cars very often. He now has six locomotives under his charge; when he was first employed he had four, possibly, and the fifth one was then ordered.

I have prepared two statements, one being an analysis of locomotive repair account for the year ending June 30, 1910, and the other an analysis of superintendence and maintenance of equipment expense for the year ended June 30, 1911, together with a note or memorandum explaining the last analysis.

(These statements offered and introduced in evidence as Defendant's Exhibit No. 73.)

As shown by the transcript of the previous records, pages 340 to 342, I was requested to itemize the amounts charged to adminis-

tration under the head of expenses which for the fiscal year ending June 30, 1910, amounted to $38,416.31, and which for the fiscal year ending June 30, 1911, amounted to $39,041.40, and that I show what part of each of those amounts represented charges to raising a reserve for the purpose of this litigation, and that I give the total of general officers whose salaries were included in the charge to that account and that I show if any part of the salaries of any of them was charged to any other account, and if so, to what other account the charge was made, and also that I show what other items were charged to this account, other than those on account of this
660 litigation and on account of the salaries of the general officers. I have prepared an analysis in accordance with this request.

(This statement offered and introduced in evidence as Defendant's Exhibit No. 74.)

Mr. Adolphus Busch, our Vice-President, and Mr. August A. Busch, our Chairman of the Board, can probably tell you what time they devote to the Manufacturers Railway better than I can. Mr. Adolphus Busch has charge of the financing of our road and directs all such matters. He has ever been ready to advise with me concerning the road. Mr. August A. Busch, the Chairman of our Board, gives as much of his time as he is asked to give, and I will say that weekly, or bi-weekly, possibly, I have occasion to call on him and discuss matters relating to the Manufacturers Railway. They do what their titles indicate they should do as Vice-President and Chairman of the Board. I take my orders from Mr. August A. Busch and consult with each of them.

This statement, Exhibit No. 74, shows that for the year ending June 30, 1911, the amount of $15,000 was charged to operating expenses to raise a reserve for the purpose of defraying this rate litigation.

At the last hearing, as appears from the record at pages 342 and 343, inquiry was made concerning the item of $7,306.87 shown as joint yard terminals, and I have given Mr. Colston a memorandum in response to that inquiry. This item appeared on a list of debits and credits passed to me by the auditing committee appointed by the Board of Directors of the Manufacturing Railway and entered in the 1909 record of the Manufacturers Railway from that audited memorandum, and the only explanation of this memorandum was —hire of equipment so much. I did not go behind the authorized committee to investigate that item, but took it into my ac-
661 count as shown in the annual report. It might be better possibly to treat this item as a rental rather than an operating charge, that is, if that was the true nature of the item, but in assembling the books at the close of the fiscal year and having a great many other things to look after, it was put in as "joint facilities" and I believe a better disposition would have been to have entered it as a rental item rather than operating expenses.

All of this data concerned a period before the operation of the road by the Manufacturers Railway Company. These charges were incurred while the Iron Mountain was operating the road. It appears

from pages 343 and 344 of the previous record, also at page 423, that I was asked concerning the charges made to operating expenses for depreciation of way and structures, and asked to state the percentage at which such depreciation was computed. I have handed a memorandum to Mr. Colston headed "Analysis of Reserve for Accrued Depreciation Account of Tracks and Structures".

(This memorandum offered and introduced in evidence as Defendant's Exhibit No. 75.)

It appears from this memorandum that during the fiscal year ended June 30, 1911, I charged to operating expenses based on one per cent of the amount of $505,702.56 as the cost of road less right-of-way and real estate. Our annual report for the fiscal year ended June 30,1911, shows total expenditures to June 30, 1910, for road as amounting to only $430,175.88, without any deductions being made for right-of-way and real estate, and included in this amount of $430,175.88 were items right-of-way and station grounds, $1,581.51, and real estate, $12,224.25. The amount of $505,702.56 for the year ended June 30, 1911, probably includes some improve-
662 ment work that had been done and had not been taken into the cost of road up to June 30, but which was taken into account in July. Oftentimes the work done in one month is not brought into the account until the succeeding month and sometimes two months will elapse before it is brought into the property account.

Upon checking the amount of $505,702.56 I find that the depreciation charge to operating expenses on account of way and structures was based on a charge of one per cent of the total of the cost of road as shown at page 35 of our report to the Interstate Commerce Commission, plus general expenses as shown at page 37, less the single item of real estate, to-wit, $12,224.25. The computed depreciation on interest and commissions on stationery and printing, on insurance and other expenditures under the head of "General Expenditures", as well as on every item other than real estate under the general heading of "Roads".

I was asked to state the officers of the roads to whom I offered the contract which we made with the St. Louis-Southwestern and I have prepared such a memorandum consisting of copies of the letters to Mr. C. Haile, Vice-President and Traffic Manager of the M., K. & T., dated December 21, 1910; to Mr. Edward O'Neill, General Agent of the C., R. I. & P., dated December 21, 1910; to Mr. C. R. Gray, Senior Vice-President Frisco Lines dated December 21, 1910; to Mr. Edward Keane, Assistant General Agent Chicago & Alton Clover Leaf Line, dated February 7, 1911, and to Mr. C. L. Hilleary, General Agent of the New York Central Lines, dated January 27, 1911. These copies of letters are bound together.

(These letters offered and introduced in evidence as Defendant's Exhibit No. 76.)

663 The contracts submitted to these gentlemen were identical with the contracts executed by the St. Louis Southwestern Railway.

The heading of this statement (Exhibit 75) shows that a reserve was set up in June, 1910, of $25,285.13. This item was charged to operating expenses.

It appears at page 384 of the previous record that I was asked how much of the fuel consumed by the Manufacturers Railway was consigned direct to it and how much was billed to other persons and the names of these other persons to whom it was consigned for the fiscal year ended June 30, 1909; June 30, 1910, and for the six months, July to December, 1911, inclusive. I have prepared such statements and they are embodied in this folder.

(This document offered and introduced in evidence as Defendant's Exhibit No. 77.)

When coal is consigned to the Manufacturers Railway we do not receive the allowance of ten cents per ton. When it is consigned to other consignees located on the Manufacturers Railway we do receive the allowance of ten cents a ton. It may be that on some of these shipments which were used by the Manufacturers Railway and which were consigned to persons other than the Manufacturers Railway that we did receive an allowance of ten cents per ton, but this would be on a comparatively small number of cars. On this coal consigned to the Western Anthracite we did not receive ten cents a ton. Upon looking at this statement I would say that we probably received ten cents a ton on the 38 tons purchased from Anheuser-Busch, 1 ton, 950 pounds purchased from Anheuser-Busch, on the 119 tons, 1,900 pounds purchased from Anheuser-Busch, and possibly on the 432 tons, 600 pounds of rejected coal from the Co-operative Mining Company which we took off their hands, and perhaps on the 298 tons of Anheuser-Busch, on the 81 tons, 500
664 pounds of Anheuser-Busch, on the 97 tons, 200 pounds of the Schroeter Coal Company, and the 84 tons, 14 pounds Schroeter Coal Company.

These enumerated shipments would cover the fullest possible amount of our coal upon which we received ten cents a ton. The reason that we did not receive allowances on shipments of coal consigned to others than the Manufacturers Railway was because our tariff does not provide for the ten-cent-a-ton secondary switching on coal used for fuel by the road performing that secondary switching. On the coal that was consigned to the Western Anthracite Coal Company and to the South Side Coal Company we collected this ten cents a ton and then refunded it. We discovered our error in this quite a while afterward.

At the previous hearing I was requested by Mr. Colston to prepare a statement of free transportation requested of the Manufacturers Railway and the transportation granted by the trunk line carriers. I have prepared such a statement showing by whom request was made, the number of our request, the date of the request, for whom the request was made, the kind of transportation and the dates and numbers of the passes.

(This statement offered and introduced in evidence as Defendant's Exhibit No. 78.)

It appears at pages 336 and 337 of the previous record that Mr. Colston requested an analysis of the depreciation reserve set up on account of our equipment and in addition to the statement of this analysis I have attached copy of journal entry No. 20 as of January 19, 1912. This statement contains an analysis of the depreciation reserve as set up and the amount which we have charged at 8 1/3 per cent per annum. Further, this statement includes
665 copies of correspondence which I had with the Chief Examiner of Accounts of the Interstate Commerce Commission.

(This statement offered and introduced in evidence as Defendant's Exhibit No. 79.)

The Diesel Engine Company occupies the real estate east of Second street, south of Utah street, including almost as far south as Cherokee, all streets and alleys having been closed, city blocks 2036, 2037 and probably half of the block 1792, this being the same ground over which the main line of the Manufacturers Railway is franchised to the southwestern city limits, and at one time occupied by this part of main line which has now been taken up. The Pauly Jail Company have to haul their traffic over a distance of about 400 feet to and from the team track of the Manufacturers Railway located on Trudeau.

I do not know who wrote the report on railway rates and terminal conditions in St. Louis, being the report of the special committee of the Business Men's League (Exhibit 51).

I first commenced collecting car service from the Anheuser-Busch Brewing Association on cars of the St. Louis Refrigerator Car Company when I received the ruling from the Commission in a similar matter. It was the ruling of the Commission in the "Proctor and Gamble" case. As soon as I received that ruling I then began to have the bills made up and presented them for payment. My recollection is that prior to that time we charged car service to other users of private line equipment other than Anheuser-Busch, and when the question was first agitated I secured from Anheuser-Busch an assurance that they would pay anything that was right and just and on that assurance we allowed the matter to remain in abey-
666 ance until we received a definite ruling. That is, for a while we treated the St. Louis Refrigerator Car Company lines as private line cars of the Anheuser-Busch Brewing Association. When I first came to St. Louis I did not know anything concerning the ownership of the St. Louis Refrigerator Car Company. As stated, these bills were rendered and have now been paid. I had no idea that our agent was not collecting on all equipment from all people, and when I asked them after the reading of that case whether or not he was doing it, he said it had not been the custom to so do during the time the Iron Mountain was operating the Manufacturers Railway and that he had followed the old method and was not collecting car service from the Anheuser-Busch on St. Louis refrigerator cars. I immediately told him that I thought he was in error and took steps to protect the company by seeing the Vice-President of the Anheuser-Busch Brewing Association and obtained from him the assurance that if there was anything wrong in the transaction

that they would promptly pay the bill. We made no distinction between the Anheuser-Busch Brewing Association cars and the St. Louis Refrigerator Car Company cars; one was treated the same as the other.

If the Manufacturers Railway had been accorded the same average car service agreement privileges that common carriers accord shippers, and had it been lawful, we would have been put to the additional expense for the time consumed in handling the car to a consumer or shipper and the handling of the empty or load to the connecting line, for which time we would have had no redress under the average agreement.

If the railroads in St. Louis, by any agreement, had protected the Manufacturers Railway in lawfully extending an average agreement to its shippers, then we would have been able to have protected
667 our shippers without loss to ourselves, and even though we were not permitted the privilege, we might have protected our shippers by providing for the loss in our tariff, but we were entitled to the same consideration as a delivering line as any other road in St. Louis.

The tracks now owned and previously owned by the Anheuser-Busch Brewing Association were turned over to the Manufacturers Railway Company under a lease, a copy of which appears in the record. I have no personal knowledge as to whether or not the interior tracks, or any of the interior tracks of the Anheuser-Busch Brewing Association were built before the connection with the Iron Mountain by means of the Manufacturers Railway Company. I do not know whether any of the tracks about the brewery were built before 1887.

The statements showing average hauls (Exhibit 54) are simply the long haul and the short haul added together and divided by two. The averages are not averages of business hauls, they are merely mathematical distance averages; they are not what is ordinarily understood as the average length of haul on a railroad.

The source of my information upon which I based the statement that our engines burned about 1,000 pounds of coal per day more than the Terminal Railroad was from a report made on a car of coal that was used by the Terminal Railway coming from the same mines and being the same grade of coal that we use. We ascertained the burning capacity or requirements of our engines for ten hours and the coal company desiring to enter into a contract with me for the use of their coal, presented, among other things, an exhibit made by the Terminal Railway of the burning of the same coal for a period of so many hours, and I found that our engine was
668 burning about 1,000 pounds a day of ten hours more than that engine was burning for a ten-hour day. This Terminal engine was a smaller engine that my engine; the Terminal engine was No. 401.

If we did not use our First street yard for purposes other than an interchange and used it strictly as an interchange yard, we could interchange more than 30 or 40 cars a day. It is impossible to use this yard purely as an interchange yard on account of the physical

property requiring a place of concentration and requiring switching service for industries, but were it possible to use it as an interchange yard exclusively, we could possibly handle 120 cars a day. This is an estimate.

I do not know how many cars one of our engines can pull on a level at one time. Our engines are 83-ton engines of modern construction and should pull as much as any other engine of that capacity.

The buildings in the background as shown in the photographs (Exhibits 55 and 56) are the buildings of the Anheuser-Busch Brewing Association. The tracks in these photographs are located upon the site of the former Cooperage Company. This cooperage plant was built to supply barrels for the Anheuser-Busch Brewing Association and any one else who would buy them. I presume the brewery was the largest customer. However, the brewery owned no part of this cooperage plant. Rudolph Stecker was the owner. I do not know the details of the physical affairs of the brewery, but I happen to know that the brewery owned no stock in this cooperage plant as I was consulted about buying the property from Rudolph Stecker.

As to my experience in the solicitation of freight other than that which I have had on the Manufacturers Railway, will say
669 that I was traveling freight agent at one time for the Louisville Southern out of Louisville. I was also traveling freight agent for the North Shore Dispatch out of Chicago. When traveling for the Louisville Southern I solicited anything I could get and if it was moving via the Louisville and Nashville I tried to take it away from them.

Redirect examination:

It is a fact that during all the periods of the year it has been my practice to keep in constant touch with Mr. Adolphus Busch with reference to all important matters relating to the business of the Manufacturers Railway. When he is in St. Louis I have constant conferences with him concerning all important business matters affecting the road. I consult him concerning extensions of track facilities, I present my plans to him and discuss them with him. I consult him concerning my efforts to secure new customers and shippers for the Manufacturers Railway and as to the best way to reach them and to persuade them to do business with our road and he assists me very materially. I consult with him concerning our relations with other railroad lines. I have found that he has an extensive acquaintance and friendship with the officials of prominent railroad lines and especially with a number of the St. Louis lines, and I have found that his personal acquaintance and friendship with officials of the St. Louis lines has helped me in handling the business of the Manufacturers Railway. The personal time and attention that Mr. Adolphus Busch has given to the Manufacturers Railway has not been merely with reference to raising money for its financial operation.

I have gone to August A. Busch just about the same as I have to

his father, in fact on all important matters I try to get them
670 together so that we three would have the same understanding as to what was being done, and these conferences have been in addition to the meetings of the Board of Directors at which our more important business matters have been considered by the entire board. Mr. August A. Busch has made calls with me and has introduced me to people in an effort to interest them in our terminals and persuade them to give us their business. He has assisted me in conferring with representatives of other St. Louis railroads concerning the business of the Manufacturers Railway, and he has been in the practice of giving considerable of his time to the interviewing of officials of other roads concerning the business of the Manufacturers Railway, and in my opinion and considering the amount of time that each of the Buschs gives and has given in the past to the business of the Manufacturers Railway Company, the amount of salary which they receive is small.

The full name of this engine company is the Busch-Sulzer Bros.-Diesel Engine Company. Mr. Adolphus Busch is the member of the Busch family interested in this concern.

Examiner Mackley: What Sulzer Brothers—is that the same Sulzer that is involved in the Sulzer estate that you were speaking about?

Mr. Moore: No, that was the Schuettler estate.

Mr. Kirby: Will you permit me to state what that concern is?

Mr. Moore: Mr. Kirby is attorney for it.

Examiner Mackley: Certainly.

Mr. Kirby: I think my information is more exact. My understanding is that Mr. Adolphus Busch's interest and his son's interest in that enterprise, which is a new one to St. Louis, is not quite 80 per cent, but it is more than a majority taking the two inter-
671 ests together. That enterprise itself is a corporation which has been organized for the purpose of continuing the business in the United States and its possessions of manufacturing what are called "Diesel Internal Oil Combustion Engines," a comparatively new type of engine which burns oil through internal combustion. The business has heretofore been conducted in other places, the engines being manufactured in other cities. This enterprise is for the purpose of erecting an enormous factory in St. Louis, where those engines will be manufactured. The associates with Mr. Busch in that enterprise consist of a number of his friends in St. Louis who hold very small amounts of stock relatively, but there are two large associate stockholders, one of them Sulzer Brothers, a famous firm of engine builders whose home is at Winterthur, Switzerland, and his other substantial associate is Dr. Rudolph Diesel, the inventor of the engine; both Sulzer Brothers and Dr. Diesel have substantial amounts of the stock in this enterprise.

Defendants' Evidence.

P. R. BETTINSON, called for defendants, testified:

I reside at Louisville, Kentucky, and I am a civil engineer for the Louisville and Nashville Railway Company; I have been in engineering work for about thirty years. I was connected with the

City Engineer's office in Louisville and for the last twenty years with the Louisville and Nashville Railroad as Assistant Engineer, Road Master, Road Master of Terminals, and at present Assistant Engineer in the Chief Engineer's office. It has been a part of my duties to estimate the cost of railroad construction. I have done work particularly with reference to railroad terminals. For eight years I was Road Master of Terminals at Nashville, Tennessee. While there I also did all the engineering work that was required by the Louisville and Nashville Railroad.

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I am acquainted with the tracks and facilities of the Manufacturers Railway and have made an estimate of their value. The respective distances between the interchanges of the Manufacturers Railway with the St. Louis, Iron Mountain and Southern Railway and the Terminal Railway Association of St. Louis on the one hand and each of the industries which are carried exclusively by the Manufacturers Railway on the other hand are shown on Blueprint Statement No. 5, dated January 13, 1912. They vary from 1800 feet, which is the distance from the team track, Second and Dorcas streets, to the interchange of the Iron Mountain road to 12,900 feet, which is the distance from the Bradbury Marble Company to the interchange with the Wiggins Ferry track near Barton street. What it would cost in each case to extend the tracks of the Iron Mountain to each of these team tracks and the industries is shown on Blueprint Statement No. 6, dated January 17, 1912. To reach all of them it would cost $40,229, exclusive of right-of-way, and the cost of the team tracks and industrial tracks would be an additional $32,868, or a total of $37,097.

(This statement No. 5 offered and introduced in evidence as Defendant's Bettison's Exhibit No. 1.)

(Statement No. 6 offered and introduced in evidence as Defendant's Bettinson's Exhibit No. 2.)

The general practice among railways for the building of private spurs for industries is for the industry to furnish the right-of-way and to do the necessary grading and to pay the entire cost of labor and material used in the building of the track. In some cases, instead of paying for the rails and supplies outright, the industry pays interest on their value.

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Seventy-five thousand one hundred and seventy-four lineal feet of track or 74 per cent of the total mileage, which I estimate to have cost $397,367, are required and operated for the traffic of the Anheuser-Busch Brewing Association and associated concerns. Twenty-six thousand eight hundred and thirty lineal feet of track or 26 per cent of the total, costing $81,078, are devoted to the business of independent patrons of the Manufacturers Railway and to team tracks. This information is given in detail in this statement dated January 13, 1912, and numbered 1, 2, 3 and 4.

(These statements offered and introduced in evidence as Defendants' Exhibits 3, 4, 5 and 6.)

From an engineering point of view it is possible to afford service similar to that afforded by the Manufacturers Railway to the indus-

tries located exclusively on its track in a more economical way than is now afforded through the tracks of the Manufacturers Railway. The industries located north of Barton street could be reached and served by connections with the Iron Mountain tracks at less expense and by a much shorter route than they are at present. Those industries in the vicinity of the brewery have their tracks very well located at present and I do not see that any material improvement could be made by changing the locations of the tracks.

I have shown by black lines on Blue Print Map F-16136 which of these team tracks and industries could be served by connection with the Iron Mountain road if the tracks of the Manufacturers Railway were not there. To reach all of the industries and team tracks now served exclusively by the Manufacturers Railway by tracks from the Iron Mountain road would cost $40,229 and the team tracks
674 and industrial tracks themselves would cost $32,868 or a total of $73,097 for all of the tracks shown in black on this blue print. I assume that the tracks now used by the Manufacturers Railway to serve these industries and team tracks cost $81,078 or about $8,000 more than it would cost the Iron Mountain road to build tracks to carry these same industries on team tracks. The estimates of cost to build these tracks are shown on this statement No. 6, dated January 17, 1912, which I have already filed. This statement No. 6 has been filed as Bettinson's Exhibit No. 2.

(Blue Print F-16136 offered and introduced in evidence as Defendant Bettinson's Exhibit No. 7.)

Assuming that the Iron Mountain Railroad owned the main switching tracks now required for the business of the Anheuser-Busch Brewing Association and their associated concerns, it would cost the Iron Mountain or any other road $11,800 to build extensions to reach all of these industries and team tracks. The industrial tracks, together with the team tracks, would cost an additional $32,868 or a total of $44,668. I have shown these in detail on statement No. 7, dated January 22, 1912.

(This statement No. 7 offered and introduced in evidence as Defendant Bettinson's Exhibit No. 8.)

The Thirteenth street yard of the Manufacturers Railway located near Thirteenth and Lynch streets is its highest yard. Those tracks are approximately 100 feet above those of the Iron Mountain along First street. While the grade on the Iron Mountain to the Thirteenth street yard referred to is not uniform, it would average 2½ feet per hundred. That is a heavier grade than would be encountered from Lynch street north. The grade from the river
675 decreases as you travel north. The Iron Mountain track along First street is level; the Manufacturers Railway varies in height from 5 feet below the Iron Mountain to 10 feet above it. The Wiggins Ferry track is also level and about 2 feet lower than the Iron Mountain tracks.

Cross-examination by Mr. Kirby:

In giving my answers I had before me a number of sheets of typewritten paper with questions and answers upon them. These questions and answers were prepared in advance. The answers were prepared by me exclusively and are my own. In reaching the results upon which I have based my answers as to the estimate of cost of construction, or the value of the tracks of the Manufacturers Railway, I first took into consideration the lineal feet of track, then the prices of the various materials that entered into the track, the price of labor, character of the paving and grading and all the things that we generally put in to make an estimate of what it would cost to build a track. I will say I made this estimate on the assumption that it would cost so much money to reconstruct the tracks today if they were not built. I did not take into account the cost of rights-of-way nor real estate; my estimates are exclusive of right-of-way and real estate, so that on my exhibits I attempted to estimate what it would cost to build a track connection between the Schroeter Coal Company's yard and the Iron Mountain road. I did not attempt to take into account what it would cost to get any rights-of-way from the Schroeter Coal Company's yard down to the Iron Mountain tracks. I have not considered whether it would be possible to get those rights-of-way or not.

In respect to most of the other industries as to which I have made similar estimates, I have not taken into consideration the physical
situation that it would be an impossibility to secure the rights-
676 of-way except upon very great expenditures of money, and
I have not taken into consideration that there are improvements there, and that the physical situation is such that it would require an initial heavy expense to reach those places from the Iron Mountain, and this is true assuming that the Manufacturers Railway was not located there. Right-of-way matters were left out of these estimates entirely.

I have been over that ground and from my observation would say that with respect to nearly every one of these industries it would require a considerable expenditure of money to acquire rights-of-way in order to reach those industries from the Iron Mountain. I have never had anything to do with acquiring a right-of-way through Louisville and I know nothing about securing rights-of-way. The Manufacturers Railway is located there and I have made my estimates as though it were not there and as though I was going to build a road so that my estimated cost is exclusive of any rights-of-way or franchises.

In figuring what I think the Manufacturers Railway line is worth, I did not attempt to take into account what it probably cost the Manufacturers Railway with reference to differences in prices at the time it was built and now. I took certain prices as of today. In making my estimate I took into account nothing but the rails, ties, roadbed, grading, that is, the tracks themselves, and paving to the end of the cross-ties about 9 feet.

In determining what belong to the Manufacturers Railway I used

a fairly good map of it from which to start. I included in my estimate the Manufacturers Railway main yard between Arsenal and Dorcas streets and east of Second street. I included all of those tracks but I did not include the yard paving. In the An-
677 heuser-Busch Brewing Association yard, which the record heretofore has referred to as the Second street yard, I have included all tracks, but did not include the cost of any of the paving. In the yard referred to in this record as the First street yard I included all tracks including the entire Pestalozzi street main line and the river yard, the viaduct, the Dorcas street main line, the North Second street main line. In the Thirteenth street yard I included all the tracks; I did the same in the Ninth street and the Eleventh street yards. All of these are shown on the statements; the detail is included with the estimate of cost of each group of tracks. My estimate covered what I thought would represent the fair cost of reproducing all of the railroad tracks, both main lines and tracks within all the railroad yards which I described. I took into account the grading necessary to level down the Second street yard. I arrived at that as nearly as I could from the surrounding country, that is, from the looks of it I made an estimate.

In my estimate I made no distinction between that part of the roadbed which is owned by the Manufacturers Railway itself and that part which it operates under lease.

I am not a graduate engineer of a technical school; I have never been an operating railroad man in the train service; I have built raidroad yards and a great part of my work has been the maintaining of railroad yards; I received my training as an engineer in practical work. I started in as a rod man and draughtsman, assistant engineer and roadmaster. In making my estimate of the cost of various parts of this property and of the probable cost of connecting these industries with the Iron Mountain, I made my estimate from observation. I did not make a survey. The distances and grades and elevations concerning which I have testified were not based upon
678 an actual survey, the distances I secured from a map which I had and which was found to be fairly correct, and where it was not correct I corrected it from actual measurements. The elevations I secured from the City Engineer's office.

I cannot tell you, without referring to my figures, how many cubic yards were removed and at what price per cubic yard in the grading of the Second street yard. I haven't the figures with me, they are in Louisville. I have none of my working details with me on which these conclusions were based. In making my figures I had nothing to go on except my own observation and my best judgment in making the valuation. In determining what were the concerns associated with the Anheuser-Busch Brewing Association I used those concerns set forth in my Exhibit No. 4 and I treated all of the shipping and delivery points named on this Exhibit No. 4 as Anheuser-Busch Brewing Association or associated concerns in arriving at my estimate. I have not endeavored to separate any jointly-used property as between the uses made by the different users.

Mr. Kirby: I still do not understand, Mr. Bettinson, how, in pre-

paring these statements, you are able to make any proportion or classification as between Anheuser-Busch Brewing Association and associated concerns, as you call them, and other patrons of the road, if you treat as an Anheuser-Busch service which is rendered across the viaduct, and you did that, did you?

Mr. Bettinson: Yes, sir, I put that in. I considered that as a storage yard for the cars.

Mr. Kirby: Well, had you been informed of the fact, that that is the principal distributing yard in which the entire service of the Manufacturers Railway is rendered?

Mr. Bettinson: No.

679 Mr. Kirby: Had you been informed of the fact that most of the interchange business handled by the Manufacturers Railway Company is handled at Lesperance street or Barton street connections, which are past the viaduct, and which passes over the viaduct?

Mr. Bettinson: Yes, but that is out of that yard, that interchange part.

Mr. Kirby: But had you been informed of the fact that this yard is used by the Manufacturers Railway Company as its distributing yard for all interchange business which it receives at the Barton street and Lesperance street interchange tracks?

Mr. Bettinson: No, I have not been informed of that fact. I considered that yard necessary to the business of the Anheuser-Busch Brewing Association and associated industries, that is the way I conidered it.

Mr. Kirby: Now, in determining whether a thing was necessary in the service of the Anheuser-Busch Brewing Association and its associated industries, as you understood them, whose judgment did you rely upon, simply your own guess in the matter?

Mr. Bettinson: No, I wouldn't call it a guess. If the Anheuser-Busch people had a building and a track to it, I considered that that track was necessary for the use of that industry and so classified it in this valuation.

I have treated the Broadway yard, which lies just east of Broadway and north of the Pestalozzi street main line, where Nelson-Morris and the St. Louis Dressed Beef Company are served, as team tracks and sidings used by the various industries.

I assigned these different yards or spur tracks under the different classifications in my exhibits as to how used by the Manufacturers Railway in the service of various industries or shippers, from observation only.

680 I spent a little over a week making these observations. If I saw an industry with a team track beside it and cars on it, I naturally supposed that track was for the benefit of that industry.

Mr. Kirby: Well, now, I want to know what your source of information is that has gone into these data. You are attempting to classify and have testified to some broad conclusions based on a classification of the proportions of the road which are used in the service of the Anheuser-Busch Brewing Association and what you call its associated industries and other patrons.

Mr. Bettinson: Yes.

Mr. Kirby: And I would like to know on whom you have relied for your information.

Mr. Bettinson: Well, I got some from Mr. Fitzgerald.

Mr. Kirby: What kind of information did you get from him?

Mr. Bettinson: I don't remember exactly what it was, but I consulted with him several times while I was here on this job.

Mr. Kirby: Was that as to what patrons were served by particular tracks?

Mr. Bettinson: I couldn't say exactly what it was, but when I was in doubt I asked him and got some valuable information from him.

Mr. Kirby: When you were in doubt on an engineering question did you ask Mr. Fitzgerald?

Mr. Bettinson: No, I didn't do that, not the engineering part of it, but the ownership and the use of various tracks.

Mr. Kirby: Was he your only helper in giving you information which you used in compiling these exhibits?

Mr. Bettinson: I had some documents also.

Mr. Kirby: What documents?

681 Mr. Bettinson: As I say, I had a very good map with names of the industries and the tracks shown on it.

Mr. Kirby: Do you know whether it is one of the maps which was introduced into this record?

Mr. Bettinson: Yes, sir.

Mr. Kirby: Can you identify the map which you worked with; I mean have you any record reference to it?

Mr. Bettinson: No, I only had it in my possession a little while and I returned it.

Mr. Kirby: When you came here to do that work you were not at all familiar with local conditions, were you?

Mr. Bettinson: No, sir.

Mr. Kirby: You came here, a Louisville man, to do the best you could with the job assigned to you?

Mr. Bettinson: Yes, sir.

Mr. Kirby: One of your exhibits is a blueprint—I refer to your Exhibit No. 7, and, as I understand it, you have laid out a possible method in which team tracks to certain industries could be reached and served by tracks connecting with the Iron Mountain and Southern Road?

Mr. Bettinson: Yes, sir.

Mr. Kirby: May I ask whether, in laying out that, you also assumed that the Manufacturers Railway was out of the way entirely?

Mr. Bettinson: I believe so, I must have done so, yes.

Mr. Kirby: Referring to that same exhibit, your No. 7, and to your black line layout of possible connections with the Iron Mountain up between Miller and Rutger streets, I observe that the lines which you have laid out on that blue print cross private property and also cross streets and alleys.

Mr. Bettinson: Yes.

682 Mr. Kirby: Did you try to take into account at all the probability of getting rights of way across that property or the expense of it?

Mr. Bettinson: No, I left the right of way out altogether.

Mr. Kirby: You just assumed that all the necessary rights of way could be got, as well as assuming that the Manufacturers Railway is not already there?

Mr. Bettinson: Yes.

Mr. Kirby: Now, isn't the same thing true with reference to your other layout of black line possible track construction? Or connections on other portions of the same exhibits?

Mr. Bettinson: Yes, sir.

Mr. Kirby: They are purely a hypothetical result based on two assumptions; first, that the Manufacturers Railway is not already on the ground, and, second, that the necessary franchise and rights of way be acquired?

Mr. Bettinson: Well, I won't say that. If the Manufacturers Railway was not there and I wanted to reach those industries, I would build a track as shown by black lines on this print and I estimated the cost exclusive of rights of way on these sheets which I have given you.

Mr. Kirby: But have you not in some cases laid out your black lines on this exhibit in a way so that they cover exactly or substantially the same lines that are covered by the lines of the Manufacturers Railway?

Mr. Bettinson: Yes, I said in my testimony that the tracks in the neighborhood of the brewery were as well located at present as they could be, that I couldn't improve on the layout very much in the location, but here I could.

Examiner Mackley: What do you mean by "here?"

683 Mr. Bettinson: Well, at Park street we could reach the industries in the vicinity at a great deal less expense than they are now reached by the Manufacturers Railway through Second street.

Mr. Kirby: Now, if that was so easy, have you any information as to why, during decades of its history, the Iron Mountain road did not do that?

Mr. Bettinson: No, I have not.

Mr. Kirby: You do not know why they did not avail themselves of what seems to you a perfectly feasible way to reach those industries?

Mr. Bettinson Well, the Second street line is used for other purposes besides reaching the industries in the vicinity of Park street.

Mr. Kirby: It is no longer possible for the Iron Mountain to do that track development, is it, because the Manufacturers Railway is there?

Mr. Bettinson: No, sir.

Mr. Kirby: The existence of the Manufacturers Railway as it is constructed prevents the Iron Mountain from doing what you have laid out on this map?

Mr. Bettinson: It does.

Mr. Kirby: Just why, during decades prior to the Manufacturers Railway Company's development and building, the Iron Mountain did not take that territory you do not know, do you?

Mr. Bettinson: No.

Mr. Kirby: But it does look to you as though the opportunity was open to them if they had chosen to take it, is that correct?

Mr. Bettinson: Well, I don't know anything about that.

Mr. Kirby: Assuming that the Manufacturers Railway Company's extension on North Second street was only within the last three or four years, would you not say that the looks of that part of
684 the city and the industries there would indicate that the industries had been there much longer than four years?

Mr. Bettinson: I should judge they were more than four years old, yes.

Mr. Kirby: It looks to you like an old and settled part of the town?

Mr. Bettinson: Not altogether. There is the John Nooter Boiler Works looks like a new concern.

Mr. Kirby: And this record shows they built on the Manufacturers Railway line since the Manufacturers Railway Company's road was started. But is it not true that as that territory disclosed itself to you, you see no reason why on the North Second street end the Iron Mountain might not have reached some of these industries if it had taken the opportunity to do so before the Manufacturers Railway got in?

Mr. Bettinson: It might have figured that the business would not pay them; I don't know that is the fact, but that is frequently the case with railroads; it costs too much to get a track to any industry to justify the expenditure.

The Iron Mountain could have reached the industries with the black lines as I have shown, but whether or not the business would justify the expenditure or not I cannot tell. I suppose the Louisville and Nashville Railway sometimes construct new spur tracks and switch tracks to serve territory which is already being served by other lines in a competing field. The Louisville and Nashville does not limit its new extensions to entirely new territory not served by other lines, but the industry pays for the side-track, that is, that is the rule. I do not know of any industry getting a side-track for nothing in the last decade. For years and years it has been the practice of railways to have the shipper pay for the construction of side-tracks, but I have known of a contract practice, that is,
685 where the railroad has paid for the entire track.

Redirect examination:

Although it is true that some of the tracks which I would have to build to reach these industries from the Iron Mountain pass over private property near the vicinity of Park avenue, it is also true that there are no extensive buildings on that private property which would have to be torn down. It would be no more difficult for

the Iron Mountain to build on these black lines than it was for the Manufacturers Railway to build where it did.

CHARLES B. PHELPS testified:

I reside at Louisville, Kentucky, and am superintendent of transportation of the Louisville and Nashville Railroad and have filled this position for over twelve years. I have been in the transportation department of the Louisville and Nashville for twenty-five years; I have been in the service of the Pennsylvania Railroad Company, Baltimore and Ohio, the New York, New Haven and Hartford and the Michigan Central. My service has been altogether in the transportation department, as a telegraph operator, train dispatcher, train master, assistant superintendent and superintendent of transportation. I have done some train work in the capacity of conductor and brakeman and some yard work. I now have charge of the equipment and the accounting therefor, the movement of trains, freight and passenger, and in conjunction with our traffic people, the dispatch of traffic.

The Manufacturers Railway in respect to car service matters in its interchange with transportation lines is primarily a plant facility and should be operated under Rule 3-E, that is, the industrial rule of the National Car Demurrage Rules. Section one of rule three reads:

"On cars to be delivered on interchange tracks of in-
686 dustrial plants performing their own switching service time will be computed from the first 7:00 A. M., following actual or constructive placement on such interchange tracks until returned thereto."

An industrial railroad is a plant facility performing its own switching service. It is allowed 48 hours' free time from 7:00 A. M. following actual or constructive placement of a car on interchange track of its own plant until returned thereto, after which free time it is assessed a demurrage charge of $1.00 per car per day. In the case of a car delivered and returned loaded, double free time, 96 hours, is allowed. In other words, the switching road, under the rule, is in the same position as a shipper or a consignee.

There is an exception to this rule that should be considered in connection with the ownership by the Anheuser-Busch Brewing Association of its private cars. Private cars are exempt from demurrage when loaded and unloaded on the tracks of the owner in interchange service, also when being stored either upon the carrier's rails or on the owner's rails awaiting orders. Also when the cars, after being released after load and are reloaded for storage purposes may be held indefinitely and without car service until they are tendered for shipment and placed on the interchange track.

Under the community of interest which exists between the Manufacturers Railway and the Anheuser-Busch Brewing Association the latter, under the fixed arbitrary allowance of six days at St. Louis and East St. Louis, would have the advantage of switching per diem reclaims on private cars, which at the per diem rate of 35 cents (that is the current per diem rate) per car per day, would

mean $2.10 per car, and in the case of a loaded movement both ways, a double reclaim of twelve days, amounting to $4.20. In
687 other words, a credit for such amounts, whereas they would only have to pay for the actual per diem earned, and in the case of a car having cleared within a calendar day, there would be no per diem to pay, they would get the same amount of reclaim just the same. This, however, would not apply on refrigerator or other private cars.

As to the refrigerator or private cars, the Manufacturers Railway has no equipment to interchange with the transportation lines on a per diem basis, and for this reason alone its application for membership in the Per Diem Rules Agreement should not be considered. Under the Industrial Rule, to which reference has been made, the free time allowed by the delivering transportation line would average practically three days (72 hours.) When it is considered, for example, that the free time on a car delivered on interchange track, say, at 8:00 A. M., does not begin until 7:00 the following morning, and also that Sundays and legal holidays are not taken into account, whereas the delivering transportation line is responsible for per diem to the owner of the car, which must be paid for every day in the year, including Sundays and legal holidays, it would be obviously discriminatory to allow an industrial line, that is, a plant facility, a greater allowance of free time than is allowed a shipper or consignee.

The competitors of the Anheuser-Busch Brewing Association, operating under the Uniform Direct Demurrage Rules, would be required to pay $1.00 per day per car after 48 hours free time, without receiving any credit whatever for switching per diem reclaims. For example, the Anheuser-Busch Brewing Association would be charged, through the Manufacturers Railway, with the regular per diem, six days at 35 cents per day, total $2.10, and would be allowed, through the Manufacturers Railway, for switching reclaims, a credit of six days at 35 cents per day, or
688 $2.10. The net result would be that for the use and detention of a car for six days, the Anheuser-Busch Brewing Association would pay nothing, while any other brewery in St. Louis would pay for the four days over the two days' free time $4.00; therefore being at a disadvantage of $4.00 per car as compared with the Anheuser-Busch Brewing Association. This situation relates to per diem cars only. I have an exhibit here illustrating the point.

(This paper offered and introduced in evidence as Defendant Phelps' Exhibit No. 1.)

This exhibit shows the result not only for the six-day period concerning which I have testified, but also for the periods from one day to ten days inclusive.

Mr. Colston: What part of the Manufacturers Railway, in your opinion as a transportation man, is operated in part or in whole as a plant facility of the Anheuser-Busch Brewing Association and associated concerns, and what part, if any, is devoted exclusively to the business of independent patrons?

Mr. Kirby: Now, if your Honor please, are these witnesses to determine and try this, the thing which the Commission is going to determine in this case, or are they simply to give evidence? I submit that this is asking this witness to determine this case and witnesses should not be asked to do that.

Mr. Phelps: There is no question, in my opinion, as to that portion of the line which serves primarily the Anheuser-Busch Brewing Association and affiliated concerns. This has already been described. There does not appear to be any real need of the other portions of the line, and when compared to similar portions, I am of the opinion the entire property of the Manufacturers Railway should be classified as a plant facility. By the term "plant facility"

689 I mean any instrument or agency employed for the economical conduct of the industrial operations of any enterprise, or for the purpose of services in connection with that enterprise, which are not actually understood as transportation services and which are not usually undertaken by transportation lines.

The essential qualifications for membership in the Per Diem Rules Agreement of the American Railway Association are embodied in the following resolutions of the American Railway Association:

"Such a road must be of standard gauge, regularly incorporated or chartered, must perform a general freight business as a common carrier with regularly published tariffs and be equipped with adequate motive power for the business. It must make application to become a member of the bureau for the safe transportation of explosives and other dangerous articles and a party to the Master Car Builders' Association's Agreement. The application must be endorsed by at least two-thirds of the lines connecting with such railroads."

The Manufacturers Railway is not a party to any of those agreements. I have a statement here which gives the average mileage of the St. Louis Refrigerator Car Company's cars on our lines. It also compares the earnings of those cars at various mileage rates allowed refrigerator cars throughout the country, as compared with the earnings which would be allowed on the per diem rate of 35 cents.

(This statement offered and introduced in evidence as Defendant Phelps' Exhibit No. 2.)

This statement shows the earnings of refrigerator cars belonging to the St. Louis Refrigerator Car Company (Anheuser-Busch series)

690 on per diem basis 35 cents per day and on a mileage basis of ¾ cent per mile and one cent per mile for the months of August, September and October, 1911, as taken from the car accountant's records. The Louisville and Nashville pays but ¾ cent, some of the lines pay one cent a mile.

For the month of August, 1911, the average miles made were 96; average earnings per car per day at the ¾ cent rate, 70 cents; at a one cent rate it would be 96 cents. The increased earnings per car per day at the rate of one cent over the ¾ cent rate would be 26 cents. The increased earnings per car per day at the ¾

cent rate over the per diem rate would be 35 cents. The increased earnings per car per day at the one cent rate over the per diem rate would be 61 cents.

For the month of September, 1911, the mileage was 104 miles; average earnings per car at the ¾ cent rate was 78 cents; average earnings per car at the one cent rate would be $1.04. The increased earnings per car at the one cent rate over the ¾ cent rate would be 26 cents; the increased earnings per car per day at the ¾ cent rate over the per diem rate would be 43 cents; the increased earnings per car per day at the one cent rate over the per diem rate would be 69 cents.

For the month of October, 1911, the mileage was 107 miles; average earnings per car per day at the ¾ cent rate was 80 cents; average earnings per car per day at the one cent rate was $1.07; increased earnings per car per day at the one cent rate over the ¾ cent rate would be 27 cents; the increased earnings per car per day at the ¾ cent rate over the per diem rate would be 44 cents. The increased earnings per car per day at the one cent rate over the per diem rate would be 72 cents.

The present per diem rate of 35 cents will be increased to 45 cents per day, effective January 1, 1913. This change in the rate will increase the reclaim allowance, where six cents are
691 now allowed, from $2.10 to $2.70.

At one time the standard switching crew consisted of a foreman and two men. It is not now the standard. We have just as many crews consisting of foreman and three men as we have of foreman and two men. The number in a crew is increased according to conditions. It is a very common practice to use air brakes in switching service and to chock cars. It is a common practice to use a push pole in moving cars around sharp curves or in confined limits.

I have been on the property of the Manufacturers Railway a number of times and have never seen any derailments. I have noticed that on some tracks they have a number of cars chocked up. Even in conjunction with the derail it is a very common thing to chock cars to keep them from running off the derail. I have noticed the condition of tracks and grades and the means of preventing the movement of cars in the Ninth street yard of the Manufacturers Railway, which is located south of Lynch street, and extending from Ninth to Eleventh street, and I would think it impossible for cars to run over the embankment in that yard. I would think it impossible, first, because they have bumping posts that seem to be very firmly cemented; then the paving between the bumping posts and the retaining wall. There appears to be a distance, I should say, of 25 inches between the bumping posts and the retaining wall. It would not be possible to accelerate sufficient momentum at this point to run a car over the wall.

From my experience as transportation man, I would say that in order to start a car weighing twenty tons and containing forty tons of freight, that it would require approximately a pull of 1,200 pounds on the draw bar to start that car.

692 I would say there is no economy in switching seventy or eighty cars at a time in a level yard on account of the time lost and it is not a general practice. I would say that thirty loaded cars was a reasonable maximum for the engines of the Manufacturers Railway to start and stop on a level track. As a matter of practical operation, I would say that the better practice would be to move even less than thirty cars at a time. The service could be performed more quickly by handling ten, fifteen or twenty cars at a time.

From what I have seen of the Manufacturers Railway, I would say that the transportation conditions, that is, the conditions of operation and switching, are not abnormally expensive or difficult as compared with other railroad terminals, considering grades and the curves and the other difficulties explained by Mr. Woodward.

Under normal conditions the large locomotives of the Manufacturers Railway can handle from ten to twelve empty beer cars up Dorcas street, and five or six loaded cars. They could handle four loaded cars of coal of 50 tons each.

The engines of the Manufacturers Railway weigh about 160,000 pounds. They weigh about 33,000 pounds on the drivers. These engines can handle 50 loaded cars of beer from the plant of the Anheuser-Busch Brewing Association over the viaduct for delivery to the Wiggins Ferry, that is, on the down hill movements. I would say that these engines can handle from 15 to 20 empty cars from the Wiggins Ferry to the plant of the Anheuser-Busch Brewing Association over the viaduct.

GEORGE W. LAMB testified:

693 I reside at Louisville, Ky., and am the statistician for the Louisville and Nashville Railroad Company. I have been connected with the accounting department of the Louisville and Nashville Railroad Company for over eleven years. During the last four years I have devoted my entire time to the preparation of statistics in rate litigation. Before my connection with the Louisville and Nashville Railroad I was connected with a boiler concern at Cincinnati, and my duties were to estimate the cost of boilers, and I was out on the road estimating contracts.

It is impossible from an accounting point of view to accurately and definitely separate property and expenses used and incurred by the Manufacturers Railway in its capacity as a plant facility from the property and expenses used and incurred in its capacity as a transportation line, if any part is used as a plant facility of the Anheuser-Busch Brewing Association. It has been held in numerous rate cases, in connection with the separation of operating expenses of a common carrier as between passenger and freight, and as between interstate traffic and intrastate traffic, and by leading authorities on the subject of railroad accounting, that it is practically impossible for a railroad accountant to accurately ascertain separately the cost of doing a particular class of business or the amount of property required for a particular class of business. (The witness here cited the case of N. P. Ry. Co. v. Keys, 91 Fed. 47, at page 52; also quoted

Prof. Logan G. McPherson, lecturer on transportation at John Hopkins University, from his book on the workings of railroads, published by Henry Holt & Company of New York, 1907, at page 91; also the first annual report of the Interstate Commerce Commission, dated at Washington, June 15, 1887, at page 70.)

On this same question I have a book written by Emory R. Johnson, Assistant Professor of Transportation and Commerce at
694 the University of Pennsylvania, and a member of the Isthmian Canal Commission from 1889 to 1903. This book was published by D. Appleton & Company, New York, in 1907. The quotation I had intended to read into the record will be found on pages 272 to 274, and agrees with the opinions previously expressed.

The same opinion as to the means of dividing the costs or elements of interstate traffic from the costs or elements of intra-state traffic is held by substantially all accountant economists by whom the subject has been considered.

The Honorable W. A. Gunther, Special Master, in his recent report to the United States Court for the Middle District of Alabama, in the case of the Louisville and Nashville R. Co. v. the Railroad Commission of Alabama and others, quoted the opinion in the case of Northern Pacific Ry. Co. v. Keys, *supra,* and in view of the great ability and learning of Special Master Gunther, it may not be amiss to quote from pages 4, 5, and 16 of his report as follows: (The witness here read the quotation as cited.)

Just as these various authorities show the impossibility of accurately separating the value of the property or investment devoted to interstate traffic from the value of the property or investment devoted to the intra-state traffic and likewise the impossibility of accurately assigning to each class of traffic its true proportion of expenses of conducting such traffic, the same authorities and opinions apply with equal force to the impossibility as an accounting proposition of accurately or definitely separating the property and expenses used and incurred by the Manufacturers Railway in its capacity as a plant facility of the Anheuser-Busch Brewing Association from the property and expenses used and incurred in its capacity as a com-
695 mon carrier or transportation line, if any.

All common carriers handling interstate commerce, switching, terminal, industrial roads, or regular transportation lines, are compelled to render a report to the Interstate Commerce Commission in accordance with a form prescribed by the Commission. The form of the general balance sheet statement prescribed by the Commission for steam roads in accordance with section 20 of the Act to Regulate Commerce provides for showing as assets all property owned as investment, including physical property owned, securities owned and investments, both on account of plant facility service and on account of transportation service as a common carrier, and all working assets, whether such assets are required for the conduct of the plant service or the service as a common carrier, and as liabilities there must be shown all stocks, all mortgages, bonds, secured debts and all working liabilities relating both to the business as a plant facility, or as a common carrier or transportation line.

Manifestly many items of property such as right of way and station grounds, ties, ballast, station buildings and fixtures would be required if only a plant facility service were conducted, and it is impossible for anyone to say except in accordance with some arbitrary rule, how much of this property shall be apportioned to the one account—the plant facility service—and how much to the other account—regular transportation service.

Further, it is manifestly impossible to say, except in accordance with some arbitrary rule, what part of maintenance of way and structures expenses, such as ballast, ties, rails and other track materials, etc., what part of maintenance of equipment expenses,
696 such as repairs, renewals and depreciation of steam locomotives, freight train crews, etc., what part of transportation expenses, such as advertising, stationery and printing and outside agencies, etc., what part of transportation expenses, such as yardmasters and their clerks, yard conductors and brakemen, fuel for yard locomotives, yard supplies and appliances, etc., or what part of general expenses, such as salaries of general officers, law expenses, etc., shall be charged to plant facility service or what part shall be charged to transportation service.

No one can say, for example, what part of the expense resulting from the wear and rot of ties or the wear and rust of rails between the connection of the Manufacturers Railway and the trunk line carriers from the foot of Dorcas street up Dorcas street to the end of that line out to Thirteenth street or the branch running up what would be Pestalozzi street shall be charged against plant facility and what part shall be charged to the transportation service, if any.

No one can, except in accordance with some arbitrary rule, say what part of the service of enginemen and trainmen or what part of the train expenses shall be charged against the plant facility service or the transportation service, if any, respectively, and these services are so intermingled and indivisible as they are in the case under investigation, that they extent into and through the various industries of the Anheuser-Busch Brewing Association and affiliated companies. Many of the expenses incurred by it in conducting its business, such as the salaries and expenses of general officers, are incurred in common in the traffic of the several services and plants through which it passes and for transportation service, if any. A large portion of the time and use of its trainmen and locomo-
697 tives is devoted to services in common with the various plants and for the transportation service. The property and expenses used and incurred in the conducting of the business of the plant facility service are thus inseparably intermixed with the property and expenses used and incurred in conducting the transportation service, and no one can say except in accordance with some arbitrary rule how the distribution shall be made between the several services.

It is therefore impossible to accurately divide the facilities so jointly used or to distribute the expenses incurred in connection with the joint service performed between the plant facility service and the transportation service, if any.

When any part of commonly used property is affected by the plant

facility used, the whole of that property must be treated as a plant facility, and when any part of the expenses incurred in connection with the commonly used property is affected with the plant facility used, it must be treated as a plant facility. It is in a case where the service performed is strictly a freight service, easier to assign the expenses and property by using as a basis for separation the cost or value per car, as the cost of handling one car is approximately the same as the cost of handling another car, but even then common property expenses can be distributed only upon an agreed arbitrary rule. As between the Anheuser-Busch Brewing Association and the competitors of that association, the recognizing of the Manufacturers Railway as a regular or standard railroad and admitting it to the per diem agreement of the American Railroad Association, there would be a decided advantage to the Anheuser-Busch Brewing Association over competing breweries at St. Louis, owing to the fact that the Manufacturers Railway is owned by the same interest that
698 owns the Anheuser-Busch Association, and any profit enuring to the Manufacturers eventually finds its way into the coffers of the same interests that own the Anheuser-Busch Association.

To illustrate this point and to show the advantage of the Anheuser-Busch Brewing Association over competing breweries in St. Louis, the same interests owning the Anheuser-Busch Brewing Association and the Manufacturers Railway, we will take the following example: The car per diem agreement in effect at St. Louis provides for six days' reclaim, and durinb the five months March, April, May, June and July of each year the per diem charge is 30c. per car per day, and 35c. per car per day for the remaining seven months. The car service or demurrage charge is $1 per day per car, with two days' free time.

If the Manufacturers Railway were admitted to the American Railway Association per diem agreement, the Anheuser-Busch Brewing Association, through its interest in the Manufacturers Railway as previously outlined, on a car held six days would be charged six days at 35c. per day, or $2.10, and it would earn from switching reclaim six days at 35c. per day, or $2.10, leaving no cost to be paid by it; while on the other hand, a competing brewery in St. Louis, not having a railroad of its own, would have to pay for each day over 48 hours' free time $1 per day, or if a car should be held by it for the same length of time as held by the Anheuser-Busch Brewing Association, that is six days, it would be compelled to pay 4 days at $1 per day, or $4, thus resulting in an advantage of $4 per car to the Anheuser-Busch Brewing Association, and thus be a discrimination against a competing brewery in that amount
699 on account of the per diem alone on per diem cars.

The Manufacturers Railway would pay no rental or per diem on private cars but charge the Anheuser-Busch Brewing Association $1 per day demurrage after 48 hours, the only difference being that the Anheuser-Busch Brewing Association pays it out of one pocket into the other, while the competing breweries would pay

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the Anheuser-Busch Brewing Association through the Manufacturers Railway.

If it was in excess of the six days' reclaim, the Anheuser-Busch Brewing Association would receive an advantage of 65c. per day, or the difference between 35c. per diem and $1 per day demurrage on the per diem cars. On per diem cars this discrimination would equal at least $1.40 per car on private cars, $1 per car on each car held over 48 hours.

I file as part of my testimony statements marked Exhibit G. W. L. No. 1, showing the amount of demurrage that would be charged by the Manufacturers Railway to a consignee at the expiration of the regular per diem of 48 hours, and the per diem charge which would be paid by the Manufacturers Railway to the owner of the car if they were admitted to the per diem agreement, and the net amount which would accrue to the Manufacturers Railway on a carrier line car delivered to the Manufacturers Railway and returned to the connection within various periods.

(This statement offered and introduced in evidence as Defendant's Erhibit Marked G. W. L. No. 1.)

When the per diem rate of 45c. becomes effective, the net amount accruing to the Manufacturers Railway for six days' reclaim will be $2.70 instead of $2.10. The net amount accruing to the Manufacturers Railway would therefore be for the first day, $2.70,
700 instead of $2.10, for the second day $2.25, for the third day $2.80, for the fourth day $2.35, for the fifth day $3.90, for the sixth day $4.45, for the seventh day $3.40, for the eighth day $4.55, for the ninth day, $5.10, and for the tenth day $5.65.

If the Manufacturers Railway were allowed 4½ days' reclaim at 45c., the amount would be $2.02½. The net amount that the Manufacturers Railway would receive for the first day would be $2.02½, for the second day $1.57½, for the third day $2.12½, for the fourth day $2.67½, for the fifth day $3.22½, for the sixth day $3.76½, for the seventh day $3.32½, for the eighth day $3.87½, for the ninth day $4.42½, and for the tenth day $4.97½.

I find from the analysis made by our car accountant that for the three months of August, September and October, 1911, the average mileage made per car per day by the St. Louis Refrigerator Car Company's cars on our lines was 102 miles, and from our reports to the Interstate Commerce Commission for the fiscal year ended June 30, 1911, I find on page 79 statements showing the mileage and revenue or compensation paid for refrigerator cars and for the St. Louis Refrigerator Car Company the number of miles shown is 180,386. At the rate of ¾ of one cent per mile which we paid, the total amount paid during the fiscal year was $1,352.75. By dividing 102 miles, or the average miles made per day, into the 180,386 total miles paid by the Louisville and Nashville, we get 1,768 as the number of days the cars were on our line. At 35c. per day this would amount to only $618.80 as compared with $1,352.75 paid on a mileage basis.

I have prepared and file herewith as part of my testimony, which I

will mark G. W. L. Exhibit No. 1*a*, a statement showing the
701 distance from East St. Louis, Ill., to various other points on the L. & N. Railroad, and the total round trip mileage with the earnings of refrigerator cars figured on the basis of one cent per mile and ¾ of a cent per mile. This statement is self explanatory.

(This statement offered and introduced in evidence as Defendant's Exhibit G. W. L. No. 1*a*.)

I have compared operating expenses of the Manufacturers Railway as reported to the Commission for the fiscal year ended June 30, 1911, and shown on pages 63 and 65 of their report, with the figures reported to the Commission for the fiscal year ended June 30, 1911, by the St. Louis Transfer Railway Company and the East St. Louis Connecting Railway Company. From a comparison of these figures in the various reports, and for other reasons, I have reached the conclusion that the figures reported by the Manufacturers Railway are greatly in excess of what the operating expenses of an economically operated railway of its character and capacity should be.

I have prepared and file herewith as part of my testimony a statement showing comparisons of operating expenses of the St. Louis Transfer Railway and the East St. Louis Connecting Railway and the Manufacturers Railway for the fiscal year ended June 30, 1911, showing the cost per revenue car handled loaded, to revenue car loaded and empty, and the cost for all cars handled.

(This statement offered and introduced in evidence as Defendant's Exhibit Marked G. W. L. No. 2.)

I have taken the number of cars handled from the reports of the respective roads to the Interstate Commerce Commission and the figures shown by column 2 for the St. Louis Transfer Railway em-
brace the number of cars handled, earning revenue loaded as
702 reported on line 1 of their report to the Commission. The same applies to column 2 under the East St. Louis Connecting Railway and under the Manufacturers Railway. In column 3 under St. Louis Transfer Railway I have used the total number of cars handled earning revenue loaded and empty reported on lines 1 and 2 of page 93 of that report to the Commission, and on column 3 of the Manufacturers Railway have used the number of cars shown by Mr. Moore's Exhibit No. 1.

The St. Louis Transfer Railway and the East St. Louis Connecting Railway report their empty cars returned without revenue as cars handled without revenue. There is no corresponding report for the Manufacturers Railway, and as to the Manufacturers Railway I was obliged to resort to the figures shown in Mr. Moore's Exhibit No. 1.

Generally speaking, I obtained the information which appears in my Exhibit G. W. L. No. 2 from the reports made by the respective companies to the Commission. I have a copy of the report of the Manufacturers Railway and copies of certain pages of the reports of the St. Louis Transfer Railway and the East St. Louis Connecting Railway certified by the Chairman of the Interstate Commerce Commission.

This exhibit in column 3 under each of the respective heads shows the cost per revenue car handled loaded and empty, for the St. Louis Transfer Railway $1,052, $1.476 for the Manufacturers Railway, $2,448, showing that the cost to the Manufacturers Railway for this service is in excess of the cost on the St. Louis Transfer Railway $1,396, or over 122 per cent, and over the East St. Louis Connecting Railway $.972, or about 70 per cent.

The greatest difference in the cost per car occurs in block 5—that is, under general expenses. By referring to column 2 under
703 each of the respective roads, the cost per revenue loaded car for the general expenses, you will find it shown that the Manufacturers Railway is almost 60 cents, or about 854 per cent per car, greater than the St. Louis Transfer Railway, and 55.4 cents, or about 486 per cent, per car greater than the East St. Louis Connecting Railway. It will also be noted that in the maintenance of equipment block that the cost per revenue car loaded for maintenance of equipment on the Manufacturers Railway is 27 cents, or 176 per cent, more than the St. Louis Transfer Railway, and over 20 cents, or about 100 per cent, more than for the East St. Louis Connecting Railway.

Taking account No. 1, superintendence, under maintenance of way and structures, under column 2 of each of the roads, the cost per loaded car of superintendence for the St. Louis Transfer Railway is 1.7 cents, East St. Louis Connecting Railway, 1.9 cents, and the Manufacturers Railway 2.8 cents. This shows that in addition to the amount charged to general expenses as administration and entirely separate and apart from that charge, the cost of superintendence of maintenance of way and structures is nearly twice as great on the Manufacturers Railway as it is on the other two roads.

It is to be noted under block 2, maintenance of equipment account No. 9, superintendence, that the Manufacturers Railway is over five times as great as the superintendence for the St. Louis Transfer Railway. It is true that in the matter of station service (account 22 under transportation expenses) there is a slightly smaller cost per car on the Manufacturers Railway than there is on the other two railroads, but the difference is not sufficient to explain the differences in administrative expenses. This difference is more than offset
704 by the excess costs for superintendence of the other blocks on the Manufacturers Railway.

The operating expenses of the Manufacturers Railway, as reported to the Commission for the fiscal year ended June 30, 1911. I will take up first the maintenance of way and structure block included in the mileage representing expenditures. Under this block are tracks located within the Anheuser-Busch Brewing Association plant and including the tracks owned by the Anheuser-Busch Brewing Association, 6.84 miles, the total is something over ten miles, or roughly speaking, about 50 per cent of the total mileage.

As in railroad operation it is almost invariably the rule for industries to maintain their tracks, a reduction should be made in operating expenses under maintenance of way and structures of about 50 per cent of the charges, or about $15,000.

In addition to the above, this block of expenses also includes the

expense of maintaining storage tracks for the St. Louis Refrigerator Company's cars, aggregating approximately 4.5 miles, which tracks are unnecessary for the operation of the Manufacturers Railway outside of the storage tracks.

At the average cost of maintenance per mile, 1.59034 this would mean a further reduction of about $6,360 for only four miles of that track. Under the maintenance of equipment block account No. 9, superintendence, it seems that the amount charged to this account is excessive, and it is between four and five times as large as the cost per car for the St. Louis Transfer Railway and the St. Louis Connecting Railway.

In view of the fact that in 1909 the total charge for this account was only $290, in 1910 $159, and considering that only four locomotives are to be kept in repair, it would seem better to have had
705 the work performed by some railroad company instead of paying $2,100 per year for a man to oversee this work, particularly when, as stated by Mr. Hamilton, the large administrative force looks after so many of the details.

Locomotive repairs, account No. 10, is also high. Not knowing the details of the account, I cannot tell without an analysis how much it should be reduced. Account No. 15, equipment depreciation, the average life of switch locomotives is much longer than the average life of road engines, for the reason that road engines are operated under a high pressure almost constantly and on a continued strain or tension, while switch engines are operated at slow speed and during a considerable part of the time stand idle, and as a rule are not subjected to as high a steam pressure as a road locomotive.

From our experience tables which we have prepared switch engines of the L. & N. System have an average life of a little over 32 years, while the average life of all locomotives on the system, including high-speed, high-pressure engines, average 23 years and 8 months.

The cost of equipment of the Manufacturers Railway is shown by their report to the Commission, page 84, as $53,616.08. Based on the scrap value of $800 and on the average life of 32 years, the annual rate of depreciation necessary to charge off the original cost of the Manufacturers Railway equipment would be 2.891 per cent, or $1,550.50, and the depreciation charge should be reduced this amount.

For a road operating under the conditions such as the Manufacturers Railway is operated, it does not seem that there should be any traffic expense. There is no necessity for the Manufacturers
706 Railway to solicit the larger portion of their traffic, and for such a small road and the short territory to be covered, it would seem that if economically operated it would not be necessary to have any separate traffic officials and the traffic expenses should only be nominal.

Not being advised of the details of the statements entering into block 4, transportation expenses, I am unable to say how much they should be reduced, although as a matter of fact they should unques-

tionably be reduced considerably from the fact that some of this expense is incurred in moving empty cars of the St. Louis Refrigerator Car Company to and about the yards and storage tracks, for which no compensation is received.

The amounts charged for general expenses, block 5, as shown in the Manufacturers Railway report to the Commission for the fiscal year ended June 30, 1911, were excessive. Item 40, administration, includes the amount charged to operating expenses to provide a fund to pay for the expenses of the present litigation. In arriving at reasonable costs for performing a service, this extraordinary expense should not be included.

Comparing the general expenses of the three switching or terminal roads, namely, St. Louis Transfer Railway, East St. Louis Connecting Railway and Birmingham Southern Railroad, the percentages of the total of block 5, general expenses, to the total operating expenses of these three roads was, respectively, 6.138, 7.122 and 3.95 per cent, taken from the reports of the first two companies to the Commission for the fiscal year ended June 30, 1911, and from the last named railroad for the fiscal year ended June 30, 1910, as compared with 26.28 for the Manufacturers Railway.

In arriving at a reasonable amount for general expenses, if you use the highest per cent as shown for these three roads—that is, for the East St. Louis Connecting Railway, 7.122 per cent—and
707 applying this per cent to the total of the first four general blocks of operating expenses, you would reduce the amount of expenses chargeable to this block to $6,353.29.

Under rentals, the items shown for tracks, $24,000, on Exhibit Moore No. 1, that representing the payment for tracks within the plant of the Anheuser-Busch Brewing Association, and which are unnecessary for the operation of the railroad and which are purely plant facility tracks and are such tracks as are ordinarily furnished by the industries themselves, this item therefore should be omitted.

The item city wharves $4,000, these being yards which are largely used for the purpose of storing empty cars of the St. Louis Refrigerator Car Company, should be reduced by at least one-half.

The item interest on operating capital is not a proper charge in arriving at the cost of performing services, and, besides, the Manufacturers Railway did not attempt to collect the money due it, and could have had this money to meet current expenses if they had made the collection from consignees or shippers. Interest on account of property purchases and expenses incident to extension south of Utah street should be eliminated in arriving at the cost of operation, for the reason that this property is not now in operation.

The amount of interest on property investment should be reduced by reducing the property investment by the amount of depreciation. The net value of the property should, of course, be used in arriving at the amount of interest to be included. This item should possibly be further reduced by the fact that it includes the cost of certain tracks for which there is no real necessity in the operations of the Manufacturers Railway, particularly the Second street line, or part

thereof, approximating $40,000, there not being enough
708 traffic on that line to justify the building of the line, and it possibly includes the cost representing contemplated future extensions which are not now being operated.

The yard between the Iron Mountain tracks and the river, worth between $65,000 and $70,000, is used largely for storing refrigerator cars for the St. Louis Refrigerator Car Company.

I have prepared as part of my testimony, marked Exhibit G. W. L. No. 3, a statement showing the increased cost, including taxes and interest on investment per car for an additional haul of two miles, using as a basis for operating expenses the cost of operating expenses of the St. Louis Transfer Railway as reported by them to the Commission for the fisal year ended June 30, 1911. (This statement offered and introduced in evidence as Defendant's Exhibit G. W. L. No. 3.) This statement shows by primary account the operating expenses of the St. Louis Transfer Railway, and, as shown in its report to the Commission in the first column of figures and under the heading "Proportion Due to Length of Haul", there is shown per cent on the amount. Now these per cents represent the proportion of the total expenses which are due to distance or to increase in the length of haul, which I obtained from our engineering department and which are substantially the same percentages given by Webb and other engineering authorities.

Applying these percentages to the operating expenses as reported, the second column of figures shows the amount of expenses for each primary account, which would be increased by an increase in the haul. In the third column of figures, under the heading "Proportion Due to Length of Haul Per Mile Operated", you will see annotations there "See Note A", and at the bottom of the page note
709 A stated: "Total mileage operated 25.44, less sidings leased 11.45, lines maintained 13.99." That is the mileage of the St. Louis Transfer Railway as they reported to the Commission, and deducting the mileage that they have leased which they do not maintain, to show the amount of mileage represented for the cost of maintenance, and is the mileage represented by the operating expenses in the first column of figures.

By dividing this mileage into the amount due to the increased length of haul, we obtained for each primary account under maintenance of way and structures the amount of increased expenses that would be incurred by the St. Louis Transfer Railway or another carrier for increasing this haul one mile, and then in the next to the last column, by multiplying that by two you get the increase in expenses due to increase in haul of two miles, which refers to note B. As to increased mileage, the railroad company would be required to construct 1.953, or say, two miles. This figure I obtained from our engineering department, being the mileage they estimated that it would be necessary to build in order to perform this service, as per Mr. Bettinson's testimony of yesterday. (On pages 1245, 1246, 1247, 1248 and 1249 the witness explains the exhibit.)

As I have previously testified, you cannot accurately, from an accounting point of view, separate the property and expenses used and

incurred in the plant facility service of the Anheuser-Busch Brewing Association from property and expenses used and incurred in any transportation service which may be performed. It is practically impossible to ascertain the proper amount of any allowance to be made to the Manufacturers Railway Company on traffic of independent concerns, if any allowance can be properly made, as any amount that should be received by the Manufacturers
710 Railway in excess of the actual cost of performing that service would result in reducing the overhead expenses or cost of operation of the Anheuser-Busch Brewing Association. On the L. & N. System for the fiscal year ending June 30, 1911, the total operating expenses, passenger and freight, were $38,479,822.61. The total number of miles run by freight cars, loaded and empty, were 380,662,834 and the total number of miles run by freight cars loaded were 259,481,644.

On this basis the cost per freight car mile, including passenger expenses, for all cars loaded and empty was 10.118637 cents, and for loaded cars 14.829497 cents. On the basis of dividing operating expenses between passenger and freight, as shown by our annual report to the stockholders, ended June 30, 1911, the freight expenses were $28,499,496.45. Dividing into this cost the total car miles, loaded and empty, would give a cost per mile of 7.486808 cents, or, for loaded cars only, 10.983242 cents.

The Louisville and Nashville's average cost of moving a car one mile, including the cost of all kinds of revenue terminal service, overhead expenses, etc., was 8.89246 cents. This cost is greater than the actual cost per freight car mile, for the reason that it costs more to handle a passenger car a mile than it does to handle a freight car a mile, due to the fewer passenger cars over which to distribute passenger expenses, fewer cars to a train and the fact that certain expenses are fixed and constant, regardless of the number of cars handled or the distance moved, therefore increasing our haul of freight one mile, or for delivery on the Manufacturers Railway should not ordinarily increase our costs any more per car than the cost of handling a car one mile for all purposes.

711 In our recent litigation with the State of Alabama our operating expenses were divided between haulage or distance expenses on the one hand, and non-haulage or non-distance expenses on the other for L. & N. lines operated in the State of Alabama, and I might state that this is a very large proportion of the total mileage of the L. & N. System. Of the total freight operating expenses for L. & N. lines in Alabama, amounting to $3,817,444.95, 65.14 per cent or $2,486,665.61 represented the haulage expenses, and 34.86 per cent or $1,330,789.34 represented the non-haulage expenses for the fiscal year ended June 30, 1909. During this year the loaded freight car mileage was 33,094,298, the total, including empties, was 52,057,511. On this basis the average mileage or distance cost per car mile loaded was 7.51 cents, and for all cars, loaded and empty, 4.77 cents. The L. & N.'s average mileage cost per mile for the year ending June 30, 1910, was 7.6644 cents, and for all cars, loaded and empty, 4.906 cents.

I have investigated our general switching service at Evansville, Ind., and from the records that we keep of the operating expenses on which the payments are actually made and passed each month on this business I am able to obtain figures applicable to the cost of performing a service which is applicable to the operation of the Manufacturers Railway in St. Louis and would especially show the cost if the service were performed by a trunk line carrier.

The Louisville and Nashville Railroad owns the terminal facilities at Evansville, Ind., consisting of passenger station, freight station, yard and team tracks and various tracks leading to industries. It also operates at Howell, Ind., a distance of 1.9 miles from the connection with the yard at Evansville—a yard in which the trains are made up and classified. These facilities are used jointly by
712 the Louisville and Nashville, the L. H. & S. L. Railway, the Illinois Central and the Big Four Railroad. The joint switching operations are kept separately from the regular operations of the railroad, other than the switching service.

An accurate record of the time required by each car in performing the various services is kept, and the expenses are distributed over the various services performed—that is, for switching for union passenger station at Evansville, the joint expenses for freight houses and yards at Evansville, the industrial and the incline switching service which is in Evansville, and the joint expenses Howell yards, and the joint switching Evansville to Howell.

From our records I am able to obtain the cost per car for performing each service, and the following results have been obtained, covering the operations for the months of September and November, 1911, based upon figures on which settlements were actually made with interested carriers.

The average cost per car of making up and classifying the trains in the Howell yard, excluding maintenance, is, per loaded car, 37.21 cents, for loaded and empty car, 29.96 cents.

The average cost per car of the straight haul from Howell yards to Evansville freight yards, a distance of 1.9 miles, is, for loaded cars, 20.97 cents, loaded and empty cars, 16.88 cents.

The average cost per car for industrial and inclined switching at Evansville, including maintenance of way and structures, per loaded car was 58.46 cents, for loaded and empty cars 29.23 cents.

The average cost per car for maintaining the tracks between Evansville freight yard and the Howell yard, which is a distance of 1.9 miles, is per loaded car 10.66 cents, for loaded and empty
713 car 8.58 cents. The cost per car for maintaining tracks in the Howell yard is per loaded car 4.43 cents, for loaded and empty car 3.57 cents, making a grand total cost per loaded car of $1.3173, and per loaded and empty car of 88.22 cents.

It must be remembered that when switching service such as the Wiggins Ferry has been provided for the only additional cost to which these railroad companies should be placed for continuing the switching service to reach industries on the Manufacturers Railway would be the added cost of maintaining the additional tracks to make a connection with these industries, instead of this additional

investment taxed on the value of the property, and the cost of extending the haul from the present connection with the Iron Mountain or the Wiggins Ferry. The average cost of maintaining equipment would be incalculable. There would be no additional traffic or general expenses.

From the figures that I have obtained from the cost of service performed at Evansville, if similar service were to be performed by the Iron Mountain or St. Louis Transfer Railway as a separate undertaking, the cost to them for this service, based on the actual cost at Evansville, should not exceed the following amounts:

	Loaded.	Loaded & empty.
The haul from Howell to Evansville, a distance of 1.9 miles, per car.....	31.63 cents	25.46 cents
Industrial and incline, switching per car	58.46 cents	29.23 cents
Total operating expenses, per car	90.09 cents	54.69 cents

The taxes on additional investment per car, which is taken from that Exhibit——

Mr. Colston: Your Exhibit No. 3?

Mr. Lamb: No. 3?

Per car is	1.5 cents	.007 cents
Interest on additional investment, per car	5.7 cents	2.09 cents
Making a total of	97.29 cents	58.29 cents

For several years I had charge of the contracts executed by the Louisville and Nashville Railroad Company with reference to the installation of siding and industrial tracks.

The general practice of the Louisville and Nashville System is that the industries shall maintain the tracks, the industries bearing the burden of the property, they paying for the materials into the industry. Sometimes the rails and splices are leased to the industry and interest at a fixed percentage is paid on that material. The cost of the construction is paid by the industry, that is, preparing the right of way and all. I have prepared a copy of our original contract bearing our Secretary's No. 8491, being a contract between the Louisville and Nashville Railroad Company and the Anheuser-Busch Brewing Association dated the 22nd day of December, 1905, covering a sidetrack into the plant of the Anheuser-Busch Brewing Association, located in St. Clair County, Illinois, on the St. Louis Division of the Louisville and Nashville Railroad near mile post No. 4.

(This statement offered and introduced in evidence as Defendant's Exhibit Lamb No. 4.)

This form it will be noted was original Form 600 revised June, 1906, and I have substituted for June, 1906—July, 1900, as the contract made with the Anheuser-Busch Brewing Association was made

on the old form prior to the last revision, and as all of the old forms are destroyed as soon as the revised form is printed, it was not possible for me to obtain an old form and it was necessary to make slight changes in the wording of the contract in order to con-
715 form to the old printed form, otherwise this is the general form now in use by the Louisville and Nashville Railroad Company.

It will be shown on the second sheet on the contract that provision is made for the maintenance, showing that the second party or the Anheuser-Busch Brewing Association shall maintain the tracks. On the first page it is shown that the Anheuser-Busch Brewing Association agreed to do all necessary grading and to pay the actual cost of labor, of land, sidetrack, switch ties, cross ties and the cost of spikes, blocks, switch rigging, and pay six per cent per annum on the value of the material, value of rails and supplies used in the construction of the sidings

F. M. LUCORE testified:

I reside at Chicago, Illinois, and am assistant to the General Agent of the American Railway Association, an assistant to Mr. Arthur Hale. I am Secretary of the Per Diem Rules Arbitration Committee of the American Railway Association and I was a car accountant of a railroad at the time the per diem rules were adopted and for several years afterward.

When per diem was adopted ten years ago the line was not drawn very sharply as to what railroads were eligible. Practically all lines were solicited to change from the practice of paying for the use of one another's cars on the mileage basis to the per diem basis and practically all of the trunk lines, I guess I may say all of the trunk lines, are members of the per diem rules agreement. Some roads that might be classed as industrial roads are also members of the per diem rules agreement, but the subscribers to the per diem rules have been rather more particular in recent years about
716 the admission of such lines than they were when the original change was made from mileage to per diem.

The rules which the subscribers have agreed to is to the effect that in paying for the rental of one another's cars, it shall be on the basis of a stated sum per day. Per diem rule five is the rule which states that when a railroad handles another railroad's car in switching service, a stated number of days may be refunded to that road. The number of days to be determined by the roads in interest at that particular point, based on the actual days required to do that particular kind of service and determined by the roads in interest.

In the mileage days, roads paid on the basis of miles traveled, computed on the road haul, no payment being made whatever for miles made within the switching territory; then when per diem was adopted they required the payment of the agreed per diem rate, whether the car was in road service or in the terminal, and in order to secure the necesary vote to change from mileage to per diem, then per diem rule five was invented so as to reimburse the switching road for per diem it had to pay out while the cars were in the terminal.

The American Railway Association has taken recent action in reference to per diem rule five, that is, rule five will be eliminated from the per diem code effective July 1, 1913. Before the General Electric Company case was decided by the Commission in June, 1908, I would say that the roads were more liberal in accepting non per diem roads into the per diem rules agreement than they have been subsequently. As I understand it, the reason is because of the possibility that reclaim rule five might affect discrimination in
717 favor of shippers or consignees by the admission of the industrial roads into the agreement.

For the use of private line cars, including privately owned refrigerator cars, the roads pay on the basis of miles traveled, the mileage, however, being computed on basis of the road haul and not on the movement within the terminal. From my experience in car service matters I should say that the payments made to private car owners on a mileage basis could be a means of discrimination in favor of shippers. In this way two shippers are located side by side, one owns cars and the other does not. The one that does own cars receives a mileage rate for their use, and if the rate is unduly high the result might be considered as equal to a reduction in the freight rate. If the number of days allowed to the Manufacturers Railway under the provisions of per diem rule five exceeds the actual requirements, I should say it would be highly improper for that road to be admitted to the per diem rules agreement.

In comparing the situation of an industry owning or having community of interest with an industrial road admitted to membership under per diem rule five, with the situation of an industry competing with this first industry, either located on that same industrial railroad having no community of interest, I would say that in the former case, that of the independent industry, that the rule would operate to the detriment of the industry so located. If the railroad received a per diem car from a trunk line to go to the independent industry and the car went to that industry and was unloaded and returned to the trunk line in say two or three days, and the railroad switching the car to that industry received a reclaim under per diem rule five, of say five days, then the road would be receiving what might be called a rebate on
718 the business going to this independent industry because the road would pay the owner of the car for the two or three days only and would get back from the trunk line five days of per diem.

Cross-examination by Mr. Watson:

The American Railway Association is a voluntary association made up of the railroads of the United States, Canada and Mexico for the purpose of discussing operating questions with a view of the general improvement of the service. I have been connected with the American Railway Association since 1907 as assistant to Mr. Hale, the general agent. Mr. Hale is employed by the Asso-

ciation to do the things that the Executive Committee and the other committees of the association instruct him to do. There are quite a number of committees of the American Railway Association. It has an Executive Committee, a Committee on Relations Between Railroads, a Per Diem Rules Arbitration Committee, a Committee on Train Rules and a Committee on Transportation. Mr. Hale is Chairman of the Committee on Relations Between Railroads, and he is also Chairman of the Per Diem Rules Arbitration Committee. He is the General Agent of the entire Association. I should say the reason for the change from the mileage basis to the per diem basis was to secure more equitable accounting and quicker accounting and return to the owner and the placing of a premium on the prompt handling of cars, whereas the old mileage basis might be said to have placed a premium on the detention of cars, and possibly for the purpose of stopping the practice of foreign lines holding cars in terminal service. In the old days as long as a car stayed idle there was no rental. In the days prior to the
719 per diem any line having terminals could take a foreign car and put it in drayage service around through the yard and pay no return for it. Under the per diem rule it is perfectly easy for the owner to know how much rental is coming to him. The situation with reference to privately owned cars is the same now as it was prior to per diem. There has been no change from mileage to per diem on privately owned cars. The reclaim period is supposed to be a sufficient time, and only a sufficient time, to reimburse the switching road for the per diem which is paid the owner of that car; the same reclaim period does not exist at all terminal points. Each terminal point determines for itself what this reclaim period is to be, it is a matter of local agreement and local administration. At St. Louis the reclaim period is six days.

If the Manufacturers Railway did not extend to the industries on its line the same average period for unloading that other lines in St. Louis extend to their industries, the industries located on the tracks of the Manufacturers Railway would be discriminated against.

In order for a railroad to be admitted to membership in the Per Diem Rules Agreement, there must first be a favorable vote of the direct connections, that is, a majority vote, then several questions are asked, one of which is: "How much, if any, of the mileage of the applying road, and how much, if any, of the business done by it is in the nature of a plant facility?" Another question is: "Are you a member of the Master Car Builders Association, and its Code of Interchange Rules?" Another: "Have you adopted the National Code of Demurrage Rules?" Another: "Are you a member of the American Railway Association's bureau for the safe transportation of explosives?"

720 It is possible for a carrier to become a member of the Master Car Builders' Association or other subsidiary organizations of the American Railway Association without becoming a member of the American Railway Association.

The membership of the American Railway Association is made up of general managers and vice-presidents, and you might say the

membership of the Master Car Builders' Association, for example, is made up of master car builders and superintendents of motive power, who, when they are at home on their individual lines, report to the members of the American Railway Association, so that it is clear that there might be and would be a degree of authority of the American Railway Association as an association over the Master Car Builders as an association, and the same would be true of other subsidiary associations. If I were a master mechanic and a matter was before the Master Car Builders' Association for solution, I think I would consult with my general manager as to what position my road should take in the proceedings.

Assuming that the average car detention on the Manufacturers Railway is the same as that on other railroads in St. Louis, and the Manufacturers Railway is denied admission to the Per Diem Rules Agreement, it would compel the Manufacturers Railway either to stand a greater expense itself or to impose this expense upon its shippers.

The Manufacturers Railway has applied for membership to the Per Diem Rules Agreement of the American Railway Association, and it is my understanding that the application was acted upon by the Railway Relations Committee. I think I am right in saying that this application of the Manufacturers Railway was discussed by the American Railway Association at their November
721 meeting, 1911, held at the Blackstone Hotel, Chicago, Illinois. I am not quite clear as to whether at that time the Railway Relations Committee positively recommended to the Executive Committee that the Manufacturers Railway be admitted to membership. I am not able to enumerate the lines that are opposing the admission of the Manufacturers Railway to the Per Diem Rules Agreement. I do not remember what was the attitude of the Louisville and Nashville Railroad on the application of the Manufacturers Railway at the November meeting of which I have just spoken. I remember being at the meeting. I do not remember that Mr. Merrick of the Big Four presented the application of the Manufacturers Railway to the Railway Relations Committee at this November meeting.

There are many lines belonging to the Per Diem Rules Agreement that are not owners of cars; the ownership of rolling stock is not necessary to membership.

Examiner Mackley: I want to ask Mr. Lucore, as a practical matter, would it be or could there be two bases of reclaim at one terminal, St. Louis—one on basis of six days and the other four and one-half days?

Mr. Lucore: I should say yes, that could be.

Examiner Mackley: You said a while ago that it was regulated by local conditions and I did not know whether those local conditions at a certain point could be subdivided into two bases.

Mr. Kirby: Well, could it be, without creating unequal conditions as between shippers? For instance, would not the enforce- of a four and one-half day reclaim in one shipping district in St. Louis and the enforcement right next door and across an arbitrary

line of a six day reclaim tend to create unequal conditions
722 as between competing shippers in each of the two districts, comparing one with the other?

Mr. Lucore: I would assume, Mr. Examiner, that all shippers were operating under the National Code of Demurrage Rules and that the question which you raise is one between railroads in which the shipper has no interest.

Examiner Mackley: Well, I assume Mr. Kirby predicates his question on the supposition that the railroad would charge it to the shipper.

Mr. Kirby: Exactly. In other words, my idea was that the railroad, even though it was subjected to greater expense because of uneven demurrage or per diem conditions between its line, comparing its line with some other line, would naturally try to impose a part of that added expense onto its customers and avoid it itself. Now shipping and competitive conditions might compel it to assume that entire expense itself. In that case it would become entirely an added expense of the road, which perhaps the Commission might have no jurisdiction to correct as between two lines, but as business is done, is it not a fact that shippers would likely, would be likely, to have unequal conditions created through the existence in the same shipping or terminal community of four and one-half days' reclaim in one part of the city and a six days' reclaim in another part of the city, competing shippers being served in each of the two?

Mr. Lucore: Why, we cannot conceive of any circumstance under which the shipper, as a shipper, is involved. Certainly the shipper will only pay what the National Code of Demurrage Rules requires him to pay; the other question is entirely a different one, one which relates to the relations between carriers.

When Rule Five was first put into effect, the purpose was
723 so that the carrier might break even and not be subjected either to an expense or make a profit as a result of the operation of the rule. It is true that some roads operating under Rule Five made money through their reclaims, while other roads lost money and were subjected to an additional expense. The St. Louis Transfer Railway, operating under Rule Five, in being allowed six days' reclaim and permitted to collect $1.00 per day from the industrial railway for a detention exceeding two days, would at the expiration of six days be $4.00 ahead in the handling of a car.

Shippers become accustomed to the average car detention in particular shipping communities, that is, they become familiar and accustomed to the National Code of Demurrage Rules. It is a fact that one small new road beginning its existence and struggling into life and growth is at a disadvantage if it is subjected to any different system of demurrage rules or car detention than that which the railroads generally, in its territory, permit, particularly if an added expense results to that railroad from the average car detention which it experiences.

Redirect examination:

Rule Five of the Code of Per Diem Rules of the American Railway Association reads:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required and determined by the roads directly interested for each local territory."

There have been a number of interpretations of that rule. One interpretation is that the car owner cannot reclaim on his own car, neither can he reclaim on cars of private ownership, they not
724 being under the Per Diem Rules Agreement. It has been definitely voted to annul this Rule Five so that the reclaim will be dispensed with entirely, so after the cancellation of this rule there will be a straight car allowance without reclaim.

Examiner Mackley: Considering not only the question of reclaim but everything that arises under the Per Diem Rules and in the conduct of business of the carriers under the Association, the carriers do, as a matter of fact, adhere to the rules adopted by the Association and are governed to that extent, although they are independent in theory, they do as a matter of fact follow the rules laid down by the Association.

Mr. Lucore: Well, while these are called the Code of Per Diem Rules of the American Railway Association, it just seems to me that that is perhaps a little misleading because they are the Per Diem Rules of the railways, they having signed the agreement through their executive officers, you see.

Examiner Mackley: So that in framing any rules, even these reclaim rules, they are restricted to the extent that there are any regulations in those Per Diem Rules to which they are a party.

Mr. Lucore: Oh, yes.

Examiner Mackley: And while independent in theory they do, as a matter of fact, following out the instructions given by the association.

Mr. Lucore: Oh, having agreed to them by written authority, you see, of their vice-president or their president.

Examiner Mackley: Yes, what you intended to testify to a while ago was that in the ordinary question of per diem they are allowed to make such rules as they want to, because the authority is expressly given in rule 5.

725 Mr. Lucore: They are empowered—rule 5 is a flexible rule, you see.

Examiner Mackley: Is there any penalty attached to the nonconformance to the rules of the association?

Mr. Lucore: Well, if a road, for instance, does not pay the per diem which is due, or if a conflict arises as to what the rules mean, then this agreement has created an arbitration commission which passes upon the points involved.

Examiner Mackley: No penalties, though?

Mr. Lucore: Oh, no; they have just agreed to abide by the Arbi-

tration Commission's decision; if they do not do it there is no penalty.

Examiner Mackley: I mean any penalty that the roads themselves submit to by reason of becoming a member of the association, expressly agreed to sustain any such penalty as that?

Mr. Lucore: They agree to it and sign their names; if they want to repudiate that, why that settles it.

Recross-examination by Mr. Kirby:

The American Railway Association, as an association, does not determine, for St. Louis, for instance, the number of days car detention or the amount of reclaim based upon it. The number of days car detention and the number of days reclaim are determined under rule 5 by the St. Louis lines which are members of the American Railway Association.

I scarcely feel competent to testify positively as to local conditions in St. Louis, but I do feel perfectly safe in saying that if a road, however young and poor and struggling, states in its application for membership to the Per Diem Rules Agreement that it is willing to accept a reclaim under per diem rule 5, based on the number of days actually required and determined by the local parties to the
726 interchange, that that would be considered a point in favor of passing on the application, and that this small line would be given just the same consideration in determining the amount of time to be allowed that the large line would be given by the local people, and it is my best impression that such roads have been consulted.

Assuming it to be a fact that the Manufacturers Railway has not been so consulted by the St. Louis lines, it is obvious that they have not accorded to it the kind of treatment that small roads are accorded in other places.

JOHN F. ROACH testified:

I reside at St. Louis and am manager of the Central Demurrage and Storage Bureau. I have been so engaged since February 1, 1904. This bureau has jurisdiction over the territory surrounding St. Louis on the lines that are members of the bureau. My duty as manager is supervising the application of demurrage rules at stations on lines members of the bureau. Prior to May 1, 1910, we applied what was known as the industrial plant rule, published in the tariffs of the carriers delivering to the Manufacturers Railway. That rule allowed one day for switching, two days for loading or unloading, and where the car was unloaded and reloaded, two additional days. After May 1, 1910, we applied the industrial plant rule, known as paragraph "F" of rule 3, which only allowed 48 hours for the loading or unloading of a car after delivery on the interchange tracks up to the return thereto; where the car was unloaded and reloaded, we pooled the free time and allowed 48 additional hours. We applied the industrial plant rule to the Manufacturers Railway because of the fact that prior to the time the Manufacturers Rail-

727 way made its connection with the St. Louis Transfer Railway, known as the Wiggins Ferry, on or about January 27, 1909, all of the deliveries to the Manufacturers Railway were made by the St. Louis, Iron Mountain and Southern. The St. Louis, Iron Mountain and Southern Railway assessed demurrage on cars delayed beyond the free time and presented the bills to the Anheuser-Busch Brewing Association, who made the settlements.

A further reason for applying the industrial plant rule to the Manufacturers Railway was because Anheuser-Busch Brewing Association paid the demurrage bills on all cars delivered to the Manufacturers Railway, and we considered the Manufacturers Railway an industrial plant. The evidence we had that the Manufacturers Railway was an industrial plant was that the Anheuser-Busch Brewing Association paid all demurrage bills. I would consider a plant facility an instrument or agent used by an industry for facilitating the handling of its products. After the adoption of the National Code of Demurrage Rules, the Manufacturers Railway could have taken advantage of the average rule under the uniform code known as rule 9. This rule divided cars into two classifications, box and refrigerator cars in one class, all other cars in the other class. Under that rule, a car unloaded within or before the first 24 hours was entitled to a credit in the class in which the car belonged. Where the cars were delayed beyond the 48 hours of free time, a debit accrued on the car in the class in which it belonged. If a car was held over nine consecutive working days, the credits could not be applied to the debits. After that period of time an arbitrary charge of $1.00 per day was made. Under the rule, accounts were closed on the last day

728 of each month, and any credits in their class were deducted from the debits, and if the credits in their class exceeded the debits, no charge was made, but if the debits exceeded the credits the difference between them was charged at the rate of $1.00 per day. At no time did the Manufacturers Railway serve notice on me that it was a common carrier and as such was subject to per diem arrangements on cars interchanged between it and other railroads. On April 18, 1910, I received a communication from Mr. Moore, President of the Manufacturers Railway, which in substance advised that the Manufacturers Railway was a reporting common carrier and protested against the change from the old industrial plant rule, which allowed three days, to the new rule as shown in the National Code of Rules, which were to become effective on May 1, 1910, and requesting that the bureau continue to allow three days.

If a carrier line car was delivered to the Manufacturers Railway at 6 a. m. on a given day, and that company was operating under the Per Diem Rule Agreement, and the car was delayed on the rails of the Manufacturers Railway for a period ranging from one to ten days, the following would be an exhibit of the per diem paid by the Manufacturers Railway to the owner of the car: the per diem paid by the delivering carrier to the Manufacturers Railway under the six-day reclaim in force at St. Louis and the demurrage charged by the Manufacturers Railway to the consignee after the expiration

of the regulation free time of 48 hours. By the following I refer to a statement that I have.

(This statement offered and introduced in evidence as Defendant's Exhibit Roach No. 1.)

As manager of the Central Demurrage and Storage Bureau, I have had no occasion to render bills or to supervise the rendering of bills for car service against the Anheuser-Busch Brewing Asso-
729 ciation; that work is accomplished by the agent of the line delivering the car.

We receive in our office daily reports of the demurrage assessed by the agent. The Manufacturers Railway paid practically all of the demurrage that accrued prior to December 1, 1911. Since that time it has paid no demurrage to any of the carriers; it owes the Wiggins Ferry (The St. Louis Transfer Railway Company) approximately $14,000 at the present time. About $1,850 of that is demurrage charged on private line cars since the time that the uniform Code of Demurrage Rules went into effect, none of which has ever been paid by the Manufacturers Railway. None of it has been paid to members of our association or to the Terminal Company by the Anheuser-Busch Brewing Association. That is, none of the demurrage on private cars delivered to the Anheuser-Busch Brewing Association has been paid, but demurrage on other private cars—a part of the charges have been paid, such as American Cotton Oil tank cars delivered to the Manufacturers Railway for the N. K. Fairbanks Company—that money has been paid by the Manufacturers Railway.

Cross-examination by Mr. Kirby:

The Central Demurrage and Storage Bureau is an association of railroads, with a manager, acting as general agent, for the supervision of the application of demurrage rules at stations defined in the territory named by the roads as coming under the jurisdiction of the bureau. At the present time the members are the Chicago, Peoria and St. Louis Railway of Illinois; the Chicago, Burlington and Quincy Railroad; the Wabash Railroad; the Louisville and Nashville Railroad; the Mobile and Ohio Railroad; the East St. Louis
730 Connecting Railway; St. Louis Transfer Railway; St. Louis Iron Mountain and Southern Railway; the Missouri-Pacific Railway; the Terminal Railway Association; St. Louis Merchants Bridge Terminal Railway; the Missouri, Kansas and Texas Railway; the St. Louis, Troy and Eastern Railroad, and the Quincy, Omaha and Kansas City Railroad. The bureau is maintained by a charge made against the line members to cover the actual expense of payment for stationery, etc., and the employes of the bureau, on the basis of the cars handled by each line in the month previous to the month on charges for which payments are made.

The executive committee determines the working rules under which our bureau is conducted. This executive committee is composed of the ranking transportation officer of nine of the line mem-

bers of the bureau. I have never reported to anyone for instructions. I was placed there with instructions to see that demurrage rules were applied, and outside of that I have received no instructions from anyone as to how the bureau should be managed. We have meetings whenever questions like a change in rules, such as the change from the uniform Code of Demurrage Rules to the National Code, or questions where the manager might be in doubt as to the particular method of settling a complex question with relation to demurrage. Such matters as these are referred to the executive committee at meetings called for that purpose.

If a road made application for a membership in the bureau the matter would be referred to the executive committee first. Copies of the application would be sent out and a meeting called for the purpose of calling a meeting of all of the lines to determine on whether the application should be accepted or not.

731 The uniform code of rules which was promulgated by the National Association of Railway Commissioners was tentatively approved by the Interstate Commerce Commission and presented to the railroads for adoption. When these rules were presented to the lines in St. Louis, in January, 1910, they were accepted without change or modification and put into effect by tariff on May 1, 1910. At the present time there is no change in these rules. What are known as the National Car Demurrage Rules is a set of rules that were agreed upon between the National Shippers' Association and the Committee on Relations of the American Railway Association. Those rules were passed to the carriers about the latter part of June and were accepted. Some of the lines put them into effect on September first and others are going to make them effective October first.

Our bureau does not determine what the average car detention is to be at St. Louis. Our bureau has nothing to do with average car detention. We formerly made a report of that kind, but it has been discontinued for four or five years. When the code of demurrage rules referred to was adopted, there was a meeting called of our Executive Committee. Those rules were presented by the manager as received by him from the American Railway Association and they were recommended to the lines for adoption by circular letter and copy of the rules.

Under the old rules applicable to the Manufacturers Railway Company, the Anheuser-Busch Brewing Association paid all demurrage, that is, I think it was prior to January 27, 1909, that it did. That was during the period that the Manufacturers Railway was being operated by the Iron Mountain and it was prior to the

732 time when the Manufacturers Railway Company operated the property for itself. It is my recollection that when our bureau applied those rules, that is, during the period the Manufacturers Railway was operated by the Iron Mountain, that business for consignees other than the brewery was being handled, for instance, the Fidel-Ganahl Lumber Company was one.

I haven't the slightest idea when the Fidel-Ganahl Lumber Company was located on the line of the Manufacturers Railway, but I

have evidence here to show that it was there at that time and have demurrage bills signed for by the Anheuser-Busch Brewing Association. I have here a bill issued by the Anheuser-Busch Brewing Association against the Fidel-Ganahl Lumber Company under date of January 2, 1909, for car service on the following cars of lumber on track today for your account. The bill does not show whether this was inbound or outbound business, but it was undoubtedly lumber inbound for the Fidel-Ganahl Lumber Company on which the Iron Mountain collected the demurrage charges from the Anheuser-Busch Brewing Association. I do not know on what track these cars were unloaded. I do not know whether it was on what is a public team track or on a private spur track of the Fidel-Ganahl Lumber Company. I know that it now has private spur tracks in its yards. I do not know whether that was lumber shipped in for the Anheuser-Busch Brewing Association for its own use, upon which they collected back demurrage from the Fidel-Ganahl Lumber Company, having paid it to the bureau, but I do know from personal observation, due to the fact that I was brought into their controversies that existed between the Manufacturers Railway Company, or rather the Anheuser-Busch Brewing Association, and Fidel-Ganahl Lumber Company, that before the private spur and yard were put in
733 for it, it was unloading lumber on the tracks of the Manufacturers Railway, but I don't know on which tracks. I do not know anything about the business done on the Manufacturers Railway except on car numbers, initials and charges coming into the office where cars have been delayed.

The Wiggins Ferry does not make a car service charge against the Manufacturers Railway for equipment delivered to the Manufacturers Railway from lines that have authorized it to act as an intermediate delivering line. The Wiggins Ferry has now a bill against the Manufacturers Railway. The St. Louis Iron Mountain and Southern Railway has some small bills, amongst them charge for $31.00 on private line cars that has never been paid and a $5.00 bill on carriers' cars. In a general way I have heard that the Manufacturers Railway has a large reclaim charge against all of the St. Louis lines and is conducting this litigation for the purpose, in part, of collecting reparation on this account from the St. Louis lines.

My Exhibit No. 1 was compiled by myself and without assistance. However, it was compiled at the instance of Mr. Phelps, he asked me to get it up.

In preparing my Exhibit No. 1 I did not have copy of Mr. Lamb's Exhibit No. 1 and I had no other written data.

JOHN A. MATHEWSON testified:

I reside at St. Louis, Mo., and am trainmaster for the Terminal Association, and as trainmaster of the terminals I am in charge of the reports of the work of the Terminal Association on the Eads bridge and the Merchants bridge. I am familiar with the methods used in performing switching in the yards of the Terminal Rail-

way Association. In the surface yards we handle about 15
734 cars in a cut when distributing cars in the fan yard. We never have switched as many as 50 or 60 cars at a time. It would be very poor practice to attempt to switch that number of cars. From my experience and observation I would say that it is not the practice of railroads in and around St. Louis and East St. Louis to switch as many as 40 or 50 or 60 cars at a time. The general average is about 15 cars.

Cross-examination by Mr. Watson:

We operate a hump yard. In our surface yard, tracks being laid on the level, we receive more than 15 or 20 cars, but we do not handle more in one switch. We do have conditions in our yard where we receive a drag of 50 cars from connecting lines for distribution in our surface yard, but we do not handle them all at one time.

In handling this drag of 50 or 60 cars, we make a cut and hold on to 15 or 20 cars perhaps, that is, where there are several in one classification. It all depends on the number of switches in the cut. Our process of handling this cut of 50 cars is to first get a switch list. This is given to the switchman and he pulls out ten or fifteen cars at a time, switches and classifies them. That is, we would make four or five cuts of this drag and distribute each individual cut. We have no conditions in our yard where we do handle more than fifteen cars in a drag, that is, unless there is a train going out and we are obliged to set cars out on account of no bill, or because of safety appliance. In such an event we would handle the entire string of cars in one switch.

When operating in the hump yard we handle on the average about 25 cars at one drag. In our East St. Louis yard I would say we handle one-fourth of our entire business in the hump yard.
735 Some of the business that we bring across the river from East St. Louis to St. Louis, Mo., we handle in this hump yard. Practically all of this business is handled in the hump yard, that is, business coming over the Eads bridge. This business is brought over the river in drags of about 30 cars.

In our hump yard the switching crews consist of 14 men. For our normal switching we use switch crews of three and four men. On the Eads bridge we have no more crews composed of three men than we have crews composed of four men. In our yard as a whole we have about an equal number of crews composed of three men and of four men. In some of our crews we only have two men.

Besides doing switching in the St. Louis terminals I have switched in the Chicago terminals of the Rock Island Railroad. The average number of men in a switching crew in that yard were three men. I am not familiar with the terminals at Peoria, Ill., nor of the terminals of the Rock Island Railroad at Rock Island, Ill., and I am not familiar with the terminals at Kansas City, Mo. My yard work has been limited to the yards in and about St. Louis and the yards in and about Chicago.

JOHN BURL WILSON testified:

I reside at East St. Louis, Ill., and am general yardmaster of the East St. Louis Connecting Railway, and as such general yardmaster have charge of the switching of that railroad. The number of cars we handle in a switching cut for distribution into the fan yard depends upon the size of the engine. We now have two classes of engines. With the 50 ton engine we generally handle about 12 cars, and with the 70 ton engine, a medium sized engine, not over 18 cars. I would say there is no economy in handling 50
736 or 60 or 70 cars in one cut and switching them in a fan yard. It is not the practice at St. Louis and East St. Louis to handle such cuts of cars in switching service.

WILLIAM LEE testified:

I reside at East St. Louis and am night yardmaster for the Louisville and Nashville Railroad. In connection with my duties I have charge of the switching of cars, and am familiar with the methods used in the handling of cars around East St. Louis in switching service.

We ordinarily handle from 10 to 12 cars in a switch cut when switching cars into a fan yard. I would say there was no economy in handling 50 or 60 or 70 cars in one cut. I do not think it would be practicable. I do not know whether this is done around East St. Louis or not.

I have a good general acquaintance with the work done around East St. Louis and St. Louis.

Cross-examination by Mr. Watson:

We have three men in our switch crews. The entire crew consists of three switchmen, engineer and foreman.

J. A. HANLEY testified:

I reside at East St. Louis and am general yardmaster for the Louisville and Nashville Railroad. My duties involve the supervision of the switching work of the Louisville and Nashville in its yards. I am familiar with switching conditions around East St. Louis. We usually handle 10 to 12 cars in one cut when switching cars into the fan yard, not over 14 cars. I do not think it practicable or economical to handle as many as 50 or 60 or 70 cars in a cut. At no place where I have worked have I seen railroads handle as many as 60 or 50 or 70 cars in a cut in switching into a fan yard.

737 Cross-examination by Mr. Watson:

We have conditions in our yard when we handle with a switch engine drags of 40 or 50 and sometimes 60 cars. That is, when taking cars to connecting lines we couple on two or three engines in order to get them to connecting lines, but we do no switching. We deliver 40 cars in a drag to the bridge, but it generally takes two engines to shove these cars into the bridge. The average number of cars that we are able to handle with one engine

when making deliveries to a connecting line is according to whether the cars are loads or empties. If we have a lot of empties we can handle 35 or 40 cars with one engine, but if we have more loads than one engine can handle, we put two engines on to be sure that the cut will get into the Terminal Railway Association. We would not be able to handle 40 cars of coal with one engine, but we could handle a string of 20 loads and 20 empties with one of our largest engines, but could not do it with a smaller engine.

Cross-examination C. B. Phelps:

I was at the last hearing when our president, Mr. Smith, testified, and heard his testimony, but I have not read his testimony since then. I read my testimony yesterday from a typewritten document, but did not confine myself strictly to the questions. However, this document I prepared for myself. No one suggested to me the order in which these questions were to be prepared. No one suggested the subject-matter that was to be covered by the questions and answers more than I was called upon to get up my own questions and answers. I was instructed to come here and testify and to prepare myself for it.

In preparing for this hearing I have consulted with our legal department. I know of the subject-matter to cover in my
738 questions and answers from the instructions I had received from our legal department.

I attended the last hearing. I think I was in attendance every day until adjournment and followed Mr. Smith's testimony very closely. I have no figures to show how much business we interchange with the Manufacturers Railway, but I do know that we get some business from it. I know that the Louisville and Nashville is involved in other cases where the situation is similar to that in this case, but I am unable to say as to the relative interests of the L. & N. Railway in this sort of litigation.

My testimony this morning and yesterday was predicated upon the fact that the Manufacturers Railway Company performs an interplant facility service.

In giving my testimony this morning and yesterday I stated that I believed the Manufacturers Railway was primarily a plant facility. This morning I used the term "an industrial road or plant facility performing its own switching service." Now that is what an industrial road means. The switching service may be primarily its own plant facility service and so on, but it is an industrial road as I see it and should be treated under Rule 3 of the uniform rules, but I would think that if the Interstate Commerce Commission should otherwise find that my testimony would have to be changed.

I know that the Manufacturers Railway Company applied for membership to the per diem agreement of the American Railway Association. I testified that Rule 5 of the per diem agreement is to be eliminated July 1, 1913.

I do not see how the Terminal Railway Association can afford to pay per diem on Louisville and Nashville cars without the
739 switching reclaims to reimburse it for the per diem paid the owners. I might add that it is expected that some pro-

vision will be made and that is why the time for the cancellation of Rule 5 was set so far ahead, that is, so as to enable the roads to make some provision for taking care of per diem within switching territory.

I did not mean to make the statement that I saw no derails such as the Hays derail, for instance, in the yards of the Manufacturers Railway Company. I was referring particularly to the question that was asked me with reference to the Dorcas street and Ninth street yard. In this yard I saw cars chocked as they properly should be, but I saw no derails in that yard. I made but a casual examination and I did not notice any derail switches. I have been over the property of the Manufacturers Railway several times making a casual inspection of the property. While on the property of the Manufacturers Railway I did not call on Mr. Moore, the president, or any other of its officers to inquire about the property or to have them explain its operations. I simply walked through the yards and gathered what information I could.

I would like to correct the understanding about my statement this morning that there were as many switch crews of five men as crews of three men. There was a time when the standard switching crew consisted of a foreman and two switchmen. The prevailing situation is that there now is a foreman and three switchmen, instead of a foreman and two switchmen, and it is often the case that the crew consists of four switchmen.

Disregarding the question of rates and looking at the service performed, the character of the service performed by the Missouri Pacific or Iron Mountain for the Laclede-Christy Clay Prod-
740 ucts Company and the character of the service performed by the Manufacturers Railway Company, the service is a switching service. It is a physical switching service. Either the Iron Mountain or the Manufacturers Railway must take up that car and handle it and the service is precisely the same as I see it. The service performed by the respective lines would be identically the same.

Mr. Watson: Mr. Phelps, can you then see why the Manufacturers Railway Company should not be allowed out of the rate a compensation for performing that service the same as the Iron Mountain or the Missouri Pacific are allowed a compensation for the service they perform?

Mr. Colston: Mr. Examiner, the witness has stated repeatedly that he knows nothing about rates or the basis thereof.

Mr. Kirby: He does not have to know, as I see, in order to answer the question. He is asking whether he does see any distinction.

Mr. Watson: It does not involve rates at all.

Examiner Mackley: You can answer that question.

Mr. Phelps: I cannot answer that question any differently, Mr. Examiner, than I have. As I see it from a transportation point of view, it requires the same service to handle that car from the point of receipt, the interchange track from the connecting line, to the point of destination. Now whether it is on through billing, whether

it is on a fixed switching charge, or what not, that is something I have nothing to do with. As I stated before, I know nothing about the rates or how the service is compensated for.

Mr. Watson: Taking two shipments, both of them originating at the same point on the Louisville and Nashville Railroad,
741 one of those shipments is destined to the Laclede-Christy Clay Products plant, on the tracks of the Missouri Pacific Railway, and the other shipment is destined to the St. Louis Basket & Box Company, located on the tracks of the Manufacturers Railway Company. The rate in effect from that point of shipment to St. Louis applies to the tracks of the Laclede-Christy plant. Now is there any reason why that same condition should not exist as to the car destined to the plant of the St. Louis Basket & Box Company?

Mr. Colston: Mr. Examiner, manifestly that calls for a traffic reason as to whether a rate should apply. If the witness can answer it I have no objection, but he has stated that he knows nothing about rates.

Mr. Kirby: I do not think it involves knowledge of traffic conditions.

Mr. Watson: I do not see that it involves a traffic condition or a rate condition or anything of that kind. I am simply trying to reach the question of the character of that service.

Examiner Mackley: He has testified that the character of the service is the same and as I understand the physical operation is exactly the same.

Mr. Phelps: That is all I can say.

Mr. Kirby: It is virtually asking the witness to say over again what follows necessarily, it seems to me, from his previous answer, but I think he ought to be able to do that.

Mr. Colston: But the witness says he does not know anything about rates as to whether rates should or should not apply or anything about it.

Mr. Phelps: I do not know anything about the published rates there.

742 Mr. Kirby: You do not have to.

Examiner Mackley: But you do say, do you not, that so far as the physical operation of the two movements is concerned there would not be any reason why the rate should not apply? Now, eliminating all traffic conditions or any other reasons, if you treat it all on the same basis, all lines, this service being the same as the other service in effect, if there were not any other reasons for it, there would be no reason why the same rates should not apply?

Mr. Phelps: I have stated, Mr. Examiner, that so far as I see it, the service——

Examiner Mackley: That is, in effect, the same as saying the service is the same?

Mr. Phelps: Yes, I said so. Yes, the service is the same.

Redirect examination:

In stating that the service performed for the Laclede-Christy is the

same as the service performed in the case of the Manufacturers Railway, I did not take into consideration that in the one case the way is open for the engines of the Iron Mountain to make delivery, and in the other case, the case of the Manufacturers Railway, the way is not open for the engines of the Iron Mountain. I simply took into consideration the feature of it being a switching service.

Recross-examination:

In answering all the questions that I have answered I have not altogether treated the interchange business of the Manufacturers Railway as plant facility service, but I did say that it was primarily a plant facility service. I do not wish to be in conflict with the Interstate Commerce Commission, but I do say that the Manufacturers Railway is primarily a plant facility, that is, that its primary
743 service is for the Anheuser-Busch Brewing Association. At the same time I stated that the character of the service which is rendered is in no respect different in the movement which was made for the Anheuser-Busch Brewing Association than from the movement of a car destined to the Laclede-Christy plant. Now without regard to common ownership of the plants, the character of the service in both instances is the same, and this would remain true with reference to a car moved for the Anheuser-Busch Brewing Association. The character of the service rendered by the Manufacturers Railway for the Anheuser-Busch Brewing Association would be the same as the service rendered by the Iron Mountain.

Assuming that a car originating on the Louisville and Nashville Railroad delivered to the Terminal Railroad, then to the Missouri Pacific, the Missouri Pacific engine receiving it for the first time from the Terminal, and then handling it from its Oak Hill branch to the lead which goes to the Laclede-Christy plant, and then a mile and a half to the plant itself, and then spotting the car wherever it is to be placed, there would be no difference in that service and the service performed on a car originating on the Louisville and Nashville delivered by the Wiggins Ferry Company to the Manufacturers Railway Company, the locomotive of the Manufacturers Railway taking it for the first time on that delivery from the Wiggins, transporting it over its line and spotting it for the Anheuser-Busch Brewing Association. Each of these services is a switching service, and the character of that service is the same.

G. F. MOORE was recalled for further cross-examination by Mr. Colston:

744 Originally the Manufacturers Railway received ten cents a ton on all of the shipments of company's coal as filed in our Exhibit No. 77. When the counsel for defendants laid such stress upon the source of our coal supply and cost of same I naturally tried to connect it with this hearing and called for the tariffs under which the movements were made. It was then for the first time that I found that ten cents per ton provided for secondary switching in St. Louis would not apply on fuel used by the railway company consuming the coal. This fact had been overlooked by the agent of the St. Louis

and O'Fallon Railway Company and by the agent of the Manufacturers Railway. Whereupon a gross statement was prepared and refund voucher No. 2345, dated January 29, 1912, was issued in favor of the St. Louis and O'Fallon Railway Company to adjust the matter with that company.

The coal tonnage read into the record at the time of the previous cross-examination represents coal finally consumed by the Manufacturers Railway upon which no refund has been made of the ten cents a ton and upon which I doubt the propriety of making it, because I bought that coal delivered on my tracks, and as far as I am able to discover now it was coal taken off the hands of shippers, coal that had been refused, excepting in cases of emergency where I took the coal from the Anheuser-Busch, the same as any railroad would confiscate coal whenever it is needed for the transaction of its business.

The tonnage read into the record is inconsiderable and the ten cents a ton on that amount is inconsiderable. If I am in error in retaining that ten cents a ton it is still available for refund.

GEORGE W. LAMB, cross-examined by Mr. Kirby:

745 My only railroad experience has been in the accounting or statistical department of the Louisville and Nashville. I have had no experience in traffic matters, and no experience in the handling of traffic, nor in the physical operation of the road. My point of view with reference to these matters is not that of knowledge or information obtained from actual contact with the property itself, either in its development or in its management, but entirely that of working over statistics that are furnished to me as the result of operations, and such conferences as I have with men concerning those statistics. Aside from cost accounting of the L. & N., my only experience in making estimates of costs in any kind of work was my experience in connection with estimating the cost of boiler construction, which had nothing to do with railroad boilers or any part of railroad business.

I have had no actual experience in estimating cost of construction, that is, of actual construction of railroad work or any other work. During the last four years all of my time has been devoted to compiling various data for use by the L. & N. railroad in its rate litigation, and as a part of my duties I have prepared the data in this case in which we are now engaged. On this particular case I started to work last January.

I received my original instructions from the legal department—that is, the general line of facts they wanted me to testify to, and I followed out those instructions.

I received no instructions or suggestions from any other department of the L. & N. Railroad, and I have not conferred with Mr. Smith, our president.

In working up certain facts it was necessary for me to consult some of the other officials—that is, to get up certain information—

746 for example, the engineering department for facts affecting the engineering department. My efforts in preparing the data which I have furnished as part of my testimony has been

to develop the contentions or points suggested to me by our legal department, and in doing this work I have tried to develop facts that would bring out the facts in this case, and naturally I have done my best to help the legal department to develop their contentions.

I was instructed to get certain information and I worked along the lines which I have stated for ascertaining these facts, and have developed the results to which I have testified, but along the lines suggested to me by our counsel, and naturally for their aid in the defense of the case. In my testimony I have to a large extent used typewritten questions and answers prepared in advance and have read from them. I have prepared these questions and answers myself.

It has been my contention and the contention of the L. & N. Railroad, in respect to this controversy, that all the service rendered by the Manufacturers Railway to the Anheuser-Busch Brewing Association is a plant facility service, so naturally in preparing my answers and giving them in this case I have had this point in view, and my answers have been based upon the assumption that the Manufacturers Railway is a plant facility.

Since coming to St. Louis I have submitted my questions and answers to Mr. Colston. He went over them and eliminated certain points for the sake of brevity, where he thought I had elaborated a little too much on some of the answers, and I tried to condense my testimony.

In my testimony I have used the expression "Anheuser-Busch Brewing Company and affiliated companies," and it is a fact
747 that I do not know what companies are affiliated with the Anheuser-Busch Brewing Association in the sense that there is any common ownership between them, and therefore in using that expression I had no particular or definite companies in mind, but assumed that there were some; but in fact I do not know what they are or how many of them there are.

In comparing the operating costs of the Manufacturers Railway Company and the operating costs of the St. Louis Transfer Railway Company and the East St. Louis Connecting Railway Company, the data upon which I base my conclusions was not limited entirely to statistical data before me. I considered the fact of the industrial or of the switching proposition—that is, I assumed for the purpose of my deduction that for comparative purposes it was fair to compare the character of the service, it being a switching service in each instance, and I assumed also that it was fair to make comparisons between the operation of those properties on the basis of their being operated under comparatively equal physical conditions.

Mr. Kirby: Is it not a fact that in stating your deductions and in drawing them in that same comparison, you did not take into consideration the fact that the Manufacturers Railway Company, on the one hand, is operated as an entire property standing upon its own bottom, and that each of the other roads mentioned is not so operated, but is a mere member or portion of the Terminal Railroad

Association of St. Louis, operated physically as a part of that large terminal system?

Mr. Lamb: They are operated absolutely independently and keep separate records of their operations.

Mr. Kirby: They report separately as a corporation to the Interstate Commerce Commission; but do you know how they ap-
748 portion their operating cost as between different subdivisions of the Terminal Railroad Association?

Mr. Lamb: Each separate road is a separate proposition. The St. Louis Transfer Railway is a separate proposition and keeps separate accounts. I base it from those figures as reported, as stated.

Mr. Kirby: On what information do you base your last answer, that they keep separate accounts—simply from the fact that they report separately to the Commission?

Mr. Lamb: From the fact that they report separately to the Commission.

Mr. Kirby: And they keep separate accounts. Each corporation has a separate corporate existence, although subsidiary to the Terminal. They report as a separate corporation?

Mr. Lamb: They report as a separate corporation; yes, sir.

Mr. Kirby: Now, it is, from the fact that they do report as a separate corporation, that you assume that their physical operation would be through an operating organization, taking into account overhead charges, and that the result would be on a separate basis?

Mr. Lamb: I have taken—my assumption has been based, as I stated, on the reports rendered to the Interstate Commerce Commission.

Mr. Kirby: And merely on those?

Mr. Lamb: Merely on those reports. Those comparisons I drew are shown right from this statement I filed.

I know there is a pocket list of railway officials. I have looked over certain sheets taken from this pocket list of railway officials, which purports to show the staff officials and the staff of the Terminal Railroad Association, the Interstate Car Transfer, St.
749 Louis Merchants Bridge Terminal Railway, including in the latter caption the East St. Louis Connecting Railway and the St. Louis Transfer Railway; also under the same caption the Wiggins Car Transfer and the Wiggins Wagon Ferries, and I have no reason to question the authenticity of these lists. Upon looking over these lists I note that the same names appear under various roads in different capacities. I note there seems to be similar operating officials in certain branches, they holding different positions for different roads, and the personnel of all of them to a substantial extent are similar. Under the title of Wiggins Ferry, as I have it before me in the list, I find four roads mentioned as operated by the Wiggins, among them the St. Louis Transfer Railway and the East St. Louis Connecting Railway, being the two lines with which I have compared operating cost with the Manufacturers Railway. When I made the comparison in my testimony I did not know the method by which the Wiggins Ferry Company as a corporation subdivides or apportions its cost of operating those subsidiary corpora-

tions. I merely took their figures from their report to the Commission.

I had no knowledge of how the salary was paid to one official representing or acting for all of the subsidiaries of the Wiggins Ferry Company, or how that salary was apportioned between the different subsidiaries.

In respect to the Wiggins Ferry Company itself owning or operating those subsidiaries, and which is in turn owned by the Terminal Railroad Association, I had no knowledge as to whether the overhead expense of any part of the Terminal Railroad Association and its subsidiaries is apportioned by the Terminal in making reports to the Commission. I have no knowledge whatever as to how they apportion their expenses. I merely base my testimony on
750 the figures they reported to the Commission.

Neither did I have any knowledge of whether separate operating officials whose salaries would enter into the operating cost or overhead general expense were apportioned between the subsidiaries of the Wiggins. I had no knowledge at all of the proportion in which such common expense items would be apportioned between the Wiggins Ferry Company and the Terminal, if those men happened to work for the Terminal Railroad Association or some of its subsidiary companies, as well as for the Wiggins and its subsidiaries. I had no information and did not take into account the extent, if any, to which locomotives or equipment owned by the Terminal Association itself were interchanged for an accommodation in emergencies with the subordinate companies of the Terminal Railroad Association in their service. I do not know whether it is a fact or not that all of the locomotives used by the Wiggins Ferry Company and its subsidiaries and by the Terminal Railroad Association and its other subsidiaries are marked "Terminal Railroad Association." I do not know who owns these engines.

I do not know how the upkeep of locomotives is apportioned between the Terminal Railroad Association, which has its name on them, and its subsidiary companies who may use them from time to time.

As to the value of my deductions, it is to be considered that I was showing the cost just as the reports were rendered, and that I did not assume to know or take into account those different conditions which have been suggested.

It is a fact that the greater the number of units in operating a railroad, the less the cost is per unit, to the point of the margin of utility, and that after passing the margin of utility, then
751 the cost per unit increases, and it would seem to follow that if a railroad undergoing that experience were to go back to the situation where the cost per unit would decrease, it must enlarge its facilities.

Mr. Kirby: Have you not ventured to criticise the experience of the Manufacturers Railway Company on general expense items in respect to the reasonableness of the maintenance of its tracks?

Mr. Lamb: I think I explained that in considerable detail and stated my reason for it. As I stated, in reference to your mileage

there, the tracks are so located within the plant of the Anheuser-Busch Brewing Association, including tracks owned by the Anheuser-Busch Brewing Association.

Mr. Kirby: Now, you have been reading again from your prepared answer?

Mr. Lamb: You are asking for my opinion and I am refreshing my mind as to what I testified to.

Mr. Kirby: I do not object to your doing it.

Mr. Lamb: Now, your tracks are used in there as part of this private industry. In common railroad operation it is customary for the industry to maintain their track. That is certainly a proper elimination of the expense as to the Manufacturers Railway.

Mr. Kirby: And you have criticised the Manufacturers Railway Company therefore because it maintains or takes the burden of maintaining those tracks contrary to what you say is common practice?

Mr. Lamb: The common practice in railroad operation is that tracks within an industry—it is the common practice in railroad operation for the industry to maintain those tracks.

Mr. Kirby: In making that criticism you have not taken into account the fact that the Manufacturers Railway Company
752 gets the use of tracks under its lease at very much less than a reasonable rental value of them, and have provided switches for maintaining those tracks.

Mr. Lamb: But those tracks are within the industry.

Mr. Kirby: You have answered—you have not taken that into account. You can make your explanation later.

Mr. Lamb: With respect to the value of that lease that I have taken into account, I have taken the amount you have shown there. Now the tracks are within the plant and are necessary for the operation of that plant, and the fact that the Manufacturers Railway is using them is merely incidental to the operation of the plant. The plant must necessarily have those tracks within its plant and they permit them to use those tracks in there. The common railroad practice is to maintain those tracks within any industry regardless of the rental they may pay for them. The tracks within an industry are usually maintained by the industry itself.

Mr. Kirby: You do not contend that it is unlawful for the Manufacturers Railway Company as a part of its lease arrangement to agree to maintain the tracks that it leases, do you?

Mr. Lamb: I am not questioning the legality of it. That would be up to our legal department.

Mr. Kirby: Your criticism is that it is an unreasonable and expensive thing for the Manufacturers Railway?

Mr. Lamb: My criticism is that the tracks that are within the plant of the Anheuser-Busch Brewing Association and that *they* are necessary for the operation of the association are being maintained at the expense of the Manufacturers Railway, which is contrary to the usual practice.

753 Mr. Kirby: Now you reach that conclusion and make that argument without taking into consideration, do you not, the further fact that the Manufacturers Railway Company is subject

by the laws of Missouri to hold open for public use and it is in practice held open for public use every foot of those tracks which it leases. You have not taken that into consideration?

Mr. Lamb: But those tracks must be used anyhow by the Anheuser-Busch Brewing Association, and any other track you might provide through the John Nooter Boi er Works they could permit anyone else to come in and load on that track if they wanted to and they maintain the tracks themselves.

Mr. Kirby: Neither have you taken into account the further fact that on all of those tracks, even those which it uses in the service of the Anheuser-Busch Brewing Association, the Manufacturers Railway Company also serves other patrons having no connection with it of any kind?

Mr. Lamb: That is merely incidental to the operation of the Anheuser-Busch Brewing Association, as to the use of the tracks. They have the tracks there and they are necessary for the operation of the Anheuser-Busch Brewing Association.

Mr. Kirby: How is it incidental, Mr. Lamb, to the business of the Anheuser-Busch Brewing Association to use its yard at Eleventh street on the Dorcas street line to make shipments for the Obert Brewing Association, which has no connection with the Anheuser-Busch Brewing Association, but on the contrary is an active competitor in business with the Anheuser-Busch Brewing Association?

Mr. Lamb: Private tracks—oh, or tracks within industries—are often used, Mr. Kirby, by outside—other shippers that have no interest in them.

754 Mr. Kirby: I am inclined to differ from you as to that or in that connection, but that does not answer my question, Mr. Lamb. Please read it again.

Mr. Lamb: Those tracks are used also by the Anheuser-Busch Brewing Association and are for their own use. They use those tracks for their loading and unloading and they permit this other road to come in so the Manufacturers Railway can get the haul of the freight.

Mr. Kirby: Do you know how they operate those tracks and what use they make of them?

Mr. Lamb: I do not know how the Obert loads in there, Mr. Kirby, just how they handle or perform their loading for the Obert brewery.

Mr. Kirby: Assuming that the Obert Brewery loads on a track in the same yard which is used also for loading interchange business done for the Anheuser-Busch Brewing Association, I ask you how this business which the Manufacturers Railway does for the Obert Brewing Company in that same yard operates for the incidental convenience of the Anheuser-Busch Brewing Association?

Mr. Lamb: A mere incident to that business.

Mr. Kirby: Or incidental benefit?

Mr. Lamb: Well, now, in that particular case there would eventually be a benefit.

Mr. Kirby: Only through such common stock ownership as there might be, is that the fact?

Mr. Lamb: They would get the benefit through that.

Mr. Kirby: There is no distinction that you can see, is there, in the character of service which is performed between those two movements?

Mr. Lamb: They are both just plant facility movements.

Mr. Kirby: You consider that the interchange business
755 which the Manufacturers Railway Company does for the N. K. Fairbanks Company a plant facility for the Fairbanks Company?

Mr. Lamb: Just hauling it to the connection.

Mr. Kirby: That does not answer my question.

Mr. Lamb: That is just a drayage proposition just the same as any other haul by dray or team from the point of their factory to the station or connection or interchange track by the railroad.

Mr. Kirby: Very well. Now is there any difference, or do you see any difference, in the character of the service involved in that movement and the character of the service involved where the Missouri Pacific or Iron Mountain act as the switching or terminal carrier delivering an interchange car to the plant of the Laclede-Christy Company which was referred to in yesterday's proceedings?

Mr. Lamb: The physical service is the same.

Mr. Kirby: Then do you regard that movement to the Laclede-Christy Company as a mere plant facility movement?

Mr. Lamb: As a switching movement.

Mr. Kirby: Well, that is not my question. Is the Missouri Pacific road in performing that movement for the Laclede-Christy plant a plant facility for that plant?

Mr. Lamb: The Missouri Pacific is not operating as a plant facility.

Mr. Kirby: Assuming that a car originates on the Louisville and Nashville, is delivered in St. Louis or East St. Louis to the Terminal Railroad Association, is carried by the Terminal to its point of connection with the Missouri Pacific in St. Louis, and is then taken by the locomotive of the Missouri Pacific and is transported through the Mill Creek Valley over its Oak Hill branch to its point of
756 switch or spur track to the lead which runs a mile and a quarter to the Laclede-Christy plant, and is there placed for unloading by the Missouri Pacific's engine—do you see any difference in the nature of the service rendered between that movement and the movement which I illustrated to you before, of an interchange car delivered by the Manufacturers Railway to the plant of the N. K. Fairbanks Company?

Mr. Lamb: The physical movement is the same.

Mr. Kirby: Is not the character of the service rendered just the same?

Mr. Lamb: Both switching movements there.

Mr. Kirby: They are both switching movements for the purpose of completing the act of transportation of merchandise moving in interstate commerce, isn't that so?

Mr. Lamb: The movement to the Missouri Pacific is the end of their haul, they are continuing there——

Mr. Kirby: End of whose haul?

Mr. Lamb: The Missouri Pacific's haul. They are delivering to the—now wait a minute; that is a continuation of a switching service and the final delivery of that car.

Mr. Kirby: The function of the Missouri Pacific in the Laclede-Christy illustration is merely that of a switching carrier performing a switching service, completing an interstate shipment, isn't it?

Mr. Lamb: That is a switching service, yes, sir.

Mr. Kirby: Is it in any respect different so far as you can see from the service which is performed in the illustrative case I gave you, the switching of a car delivered moving in interstate commerce delivered by the Manufacturers Railway to the N. K. Fairbanks Company's plant?

757 Mr. Lamb: They are both switching services.

Mr. Kirby: Are they not alike so far as you can see in their character?

Mr. Lamb: In the actual performance of the service, yes, sir.

Mr. Kirby: And in the character of the service which is performed, aren't they alike?

Mr. Lamb: The services are similar.

Mr. Kirby: Now, do I understand you to say that you regard the Manufacturers Railway Company as a plant facility in respect to that particular service rendered to the N. K. Fairbanks Company?

Mr. Lamb: A plant facility of the N. K. Fairbanks Company.

Mr. Kirby: Of the N. K. Fairbanks Company, because that is the plant it is serving in that movement?

Mr. Lamb: It is making the haul just the same as any drayage—making a movement from their plant down to the connection with the railroad.

Mr. Kirby: Do you regard that movement as a plant facility movement for the N. K. Fairbanks Company?

Mr. Lamb: Performed by the Manufacturers Railway?

Mr. Kirby: Yes.

Mr. Lamb: That is the switching service that is performed by them.

Mr. Kirby: But you still do not answer my question. Do you regard the Manufacturers Railway in that act of service to the N. K. Fairbanks Company as a plant facility for the Fairbanks Company?

Mr. Lamb: They are making delivery from their plant to the carrier as——

Mr. Kirby: No, it is an independent movement.

Mr. Lamb: It seems to me it is just merely a switching 758 service in there from the carrier into the plant of that concern.

Mr. Kirby: Then you do regard it as a plant facility of the Fairbanks Company in respect to that movement?

Mr. Lamb: As a completion of the service, the switching service in there.

Mr. Kirby: I still don't understand what your answer is to my

question. Do you regard it as a facility of the Fairbanks Company in respect to that movement?

Mr. Lamb: If I get the thing right, it is just a switching—a completion of the delivery of that car in there as a switching performance.

Mr. Kirby: Well, now, if that is your test, does that lead to the conclusion in your mind that it is a plant facility of the Fairbanks Company?

Mr. Lamb: I do not believe that that could be considered in that case as a plant facility of the Fairbanks Company.

Mr. Kirby: You don't think it is a plant facility?

Mr. Lamb: No.

Mr. Kirby: Very well. Do you regard the Missouri Pacific road as a plant facility of the Laclede-Christy Company in respect of that movement which I illustrated to you?

Mr. Lamb: No, sir.

Mr. Kirby: You do not. Now, wherein does either of those movements differ from the movement which I illustrated to you of an inbound car to the Louis Obert Brewing Company, delivered to them at the Twelfth street yard or switch of the Manufacturers Railway Company?

Mr. Lamb: I do not see the difference.

Mr. Kirby: Well, then, you would not regard the Manu-
759 facturers Railway as a plant facility of the Louis Obert brewery, would you, in respect of that movement?

Mr. Lamb: That is a means of getting their product from the brewery to the receiving depot.

Mr. Kirby: Take an inbound movement again, so our parallel may remain the same. An inbound movement originating on the line of the Louisville and Nashville Railroad consigned to the Louis Obert Brewing Company, St. Louis, via the Manufacturers Railway, delivered by the Louisville and Nashville to the Wiggins Ferry or Terminal, by them to the Manufacturers Railway at the foot of Barton street, moving over the viaduct and up the Dorcas street line and delivered by the Manufacturers Railway Company to the Louis Obert Brewing Company on the Manufacturers Railway rails at Twelfth and Lynch streets—do you regard the Manufacturers Railway as a plant facility of the Louis Obert Brewing Company in respect of that movement?

Mr. Lamb: They perform a switching service.

Mr. Kirby: Isn't it just the same kind of service that was illustrative of the two preceding illustrations I gave you, one in respect to the N. K. Fairbanks Company and the other the Laclede-Christy Company?

Mr. Lamb: A switching service.

Mr. Kirby: Do you see any difference in the character of the service rendered?

Mr. Lamb: Not in the physical operation; no, sir.

Mr. Kirby: Now, one more illustration. Wherein does the character of the service rendered differ in either of the three illustrations given you from this additional illustration, viz: A carload of mer-

chandise originating on the Louisville and Nashville road consigned to the Anheuser-Busch Brewing Association, Twelfth and Dorcas streets, St. Louis, delivered by the Louisville and
760 Nashville to the Wiggins Ferry Company, by the Wiggins Ferry Company delivered to the Manufacturers Railway at the foot of St. George street on the river front, and from that point transported by the Manufacturers Railway over its rails to Twelfth and Dorcas streets, there delivered to the Anheuser-Busch Brewing Company, the consignee, on the same track where the car previously illustrated had been delivered to the Louis Obert Brewing Company?

(Counsel for the defendants here interposed objection to this line of questioning on the ground that the questions were not proper and upon the further ground that the witness, being an accountant and not a traffic man or a lawyer, should not be asked the distinction between one movement and another movement.)

Mr. Lamb: Not being qualified to answer as to transportation features and traffic features, and not, of course, being posted on the traffic proposition, my opinion is absolutely worthless as to services, the class of those services being performed.

Mr. Kirby: Is that your answer?

Mr. Lamb: Yes, sir.

Mr. Kirby: Now, Mr. Lamb, I ask you whether in giving that answer you departed from your previous effort to try and state whether you saw the distinctions between the character of the service, and whether you answered it as you did because of the suggestion that Mr. Colston made in his objection, in which he stated that you did not have expert information on this subject-matter—was that the thought in your mind in making that answer?

Mr. Lamb: I will state that influenced my answer.

Mr. Kirby: Yes. Now, are you any less able in your own mind to see, and state whether you see, any point of difference between the two movements which was called for by my last question
761 calling for that conclusion from you? If you are willing still to let your mind work on the subject-matter of that question, I would like you to answer it.

Mr. Lamb: Well, I do not feel qualified, Mr. Kirby, to answer that question.

Mr. Kirby: Are you willing to undertake to try and answer that question of mine? I respectfully submit that that question does not require knowledge of traffic conditions any more than many of the conclusions which you gave in your direct testimony in attempting to characterize this Manufacturers Railway Company or its service as a plant facility for the Anheuser-Busch Brewing Association.

Mr. Lamb: For what my opinion may be worth, which in this particular case is probably not of much value from a legal point of view, I would personally consider the movement an absolute

plant facility movement for the Anheuser-Busch Brewing Association.

Mr. Kirby: I did not ask you that. My question is, wherein is there a difference, so far as you can see, in the character of the service rendered, comparing those movements?

Mr. Lamb: So far as the character of the service rendered, physical operation of movement is concerned there is practically no difference, but the interests of the Manufacturers Railway controlling the Anheuser-Busch Brewing Association, in my humble opinion it is a plant facility movement.

Mr. Kirby: Thank you. Now, is it not a fact that it is the common interest in the way of ownership which constitutes the only fact which makes you reach that conclusion and differentiate between the Manufacturers Railway and the other lines I have mentioned in rendering the terminal service?

762 Mr. Lamb: I think that has to do with it.

Mr. Kirby: Mr. Lamb, is it not a fact that without an operating or commercial knowledge of the business of the Manufacturers Railway Company, or the competitive railroad conditions that it has to meet commercially in South St. Louis, you have ventured to criticise its experience in respect of expense for soliciting freight?

Mr. Lamb: Well, in view of the fact, Mr. Kirby, that a very large measure of the business handled by the Manufacturers Railway comes from the Anheuser-Busch Brewing Association, it would seem to me that it was not necessary to have a very extensive traffic force and that some of the other officials—I understand President Moore solicits traffic—that therefore there would be no extensive traffic expenses.

Mr. Kirby: But without knowing the actual conditions, without knowing how much effort it is advisable from a business point of view to expend in order to get more business, and what the reasonable needs are of incurring such expense, you have attempted to criticise the experience of the Manufacturers Railway on that expense.

Mr. Lamb: I have stated right here that a road operating under conditions such as the Manufacturers Railway is operated, that it does not seem that there should be practically any traffic expense; I think they should be merely nominal.

Mr. Kirby: Then it is your idea that that road should attempt to grow as Topsy did, just by happening and without effort to increase its traffic with the general public?

Mr. Lamb: No, I think—that was practically based on the fact that you have more officials there for the small traffic

763 you cover than would be sufficient to handle that particular part of the business.

Mr. Kirby: But you make even that suggestion, do you not, without actual knowledge of what the actual conditions are under which they have to get their business, and particularly get new business?

Mr. Lamb: I know your operations are confined to practically

five miles of road. Now one man certainly would not have to devote ten hours a day to covering the territory and the industries located on your plant.

Mr. Kirby: How much is the expense per year for that work in the Manufacturers Railway account which you criticise?

Mr. Lamb: I have not deducted anything for that. I stated that the nominal traffic expense for the Manufacturers Railway is $1,725.91.

Mr. Kirby: In view of the fact that the evidence in this case shows that the Manufacturers Railway has very rapidly developed its outside business, or business in addition to that handled by the Anheuser-Busch Brewing Association, do you criticise that as an unreasonable expenditure for the getting of business?

Mr. Lamb: I have not stated it was unreasonable; I say it should be—a merely nominal amount should be charged in there for traffic expenses.

Mr. Kirby: Do you criticise that as excessive, or don't you?

Mr. Lamb: I have not said it was—have not deducted anything for that, have not made any deductions at all, merely stating that there should be very slight traffic expense there.

Mr. Kirby: Still your criticism was in fact made from the point of view of such information as you had on the statistical data, and without any intimate or exact knowledge of the real con-
764 ditions under which the road was operating?

Mr. Lamb: Certainly.

Mr. Kirby: Aren't there a great many other items that are properly classified under that head other than merely soliciting of business—for instance, publication of tariffs?

Mr. Lamb: Yes, sir; there are—their tariff charges, stationery and printing.

Mr. Kirby: Rate clerks?

Mr. Lamb: Yes, sir—wait a minute. This classification I have here, Mr. Kirby, is of your road, your detail——

Mr. Kirby: I don't care for it in great detail; there are a number of other headings besides expense of soliciting?

Mr. Lamb: Yes, sir; certainly.

In making my comments on the subject-matter of the taxes paid by the Manufacturers Railway Company, I based my testimony on what additional amount of taxes would have to be paid for two additional miles of line, and in arriving at that estimate that was based clearly on the value of the property as a total—the sum total of your road and equipment as shown in your report to the Commission, and upon the assessed value of that property as shown by Mr. Moore's exhibit, and then I merely ascertained the percentage that the assessed value was of your total value as reflected by your books and applied that same percentage to the increased or additional property which our engineering department estimated would be necessary, and arrived at that rate in that manner. There is no criticism of your taxes.

The entire assumption upon which I based my conclusions is

765 shown by Mr. Moore's exhibit; I did not take anything other than your total value of your property as reflected by your books and the total assessment as made by the taxing authorities of Missouri.

Redirect examination:

When I was given certain matters to investigate by our legal department, I was asked to testify to the facts, and when I was asked to testify to any assumption along a certain line if the facts were true, the opinions that I have stated in my testimony are my own and the facts as I determined them are as I determined them to be.

In answering Mr. Kirby's question as to my investigation of the expenses of the Manufacturers Railway and of the expenses of the Terminal Association, I overlooked the fact that I did make some investigation in the auditor's office of the Terminal Railway Association. It is also true that in addition to my testimony as an accountant and statistician, I made a casual observation of the Manufacturers Railway, and also examined maps of the Manufacturers Railway in order to further familiarize myself with the subject-matter. My testimony is that of an accountant and statistician, and not that of an operating man. The lease to which I have referred in my testimony was the lease entered into the 31st day of December, 1908, by and between the Anheuser-Busch Brewing Association and the Manufacturers Railway.

Recross-examination by Mr. Kirby:

You said in your redirect examination you went to the Terminal Railroad Association and made some investigation there of their accounts. Did that investigation cover the particular subject-matter I asked you about as to the method or extent in which they apportion between their own service and that of their subsidiary companies, matters like overhead expense?

766 Mr. Lamb: No, sir.

C. B. Compton testified:

I am freight traffic manager of the Louisville and Nashville Railroad, with headquarters at Louisville, Kentucky. As traffic manager I have jurisdiction over freight traffic in connection with the road's general rate construction. I am expected to be familiar with the rate situation generally on different parts of the Louisville and Nashville Railroad and its terminals at the various points on the system.

I entered the service of the Louisville and Nashville Railroad the 1st of August, 1871, and I have been in its continuous employ since that time in various capacities, such as clerkships, agencies, contracting agencies, soliciting freight agent, general agent, general freight agent, traffic manager and freight traffic manager. I am acquainted with the location and the properties served by the Manufacturers Railway. I have here a map of that portion of South St. Louis in which the Manufacturers Railway is located.

(Map offered and introduced in evidence as Defendant's Exhibit Compton No. 1.)

This map shows the following:

A. In red the line of the Manufacturers Railway.

B. The portion of the St. Louis, Iron Mountain and Southern Railway, and the St. Louis Railway Transfer or the Wiggins Ferry, which covers the same territory.

C. The location of industries of shippers and receivers of freight in that part of the city.

D. The connection of the Manufacturers Railway with the St. Louis Iron Mountain and Southern Railway and the Wiggins Ferry tracks.

E. The team tracks and private industry tracks of the
767 Manufacturers Railway, the St. Louis Iron Mountain and Southern, and the Wiggins Ferry.

I have here a key to this map which shows the names of the industries whose locations are indicated by numbers on the map.

(This index offered and introduced in evidence as Defendant's Exhibit Compton No. 2.)

The object of this map is to show the location of the railway tracks and industries in South St. Louis between Chouteau avenue on the north and Potomac street on the south. That territory covers the entire territory of the Manufacturers Railway, or, to put it differently, in that territory is confined the Manufacturers Railway. It shows the industries located on each of the lines which are served by track facilities, also shows the team tracks of the several roads in that vicinity.

In my opinion the Manufacturers Railway has always been and now is a plant facility. It has no freight depot, handles no less than carload freight and does no passenger business. The greater part of its mileage consists of yard tracks or sidings, which serve the plant of the Anheuser-Busch Brewing Association, and the service which it performs is primarily that of a plant facility of the Anheuser-Busch Brewing Association. It is simply engaged in switching cars to and from the connecting lines of the St. Louis Iron Mountain and Southern, and the St. Louis Transfer Railway—a part of the St. Louis Terminal Association. It is also engaged in switching business to and from those connections and industries affiliated with the Anheuser-Busch Brewing Association.

When speaking of concerns owned by or affiliated with the Anheuser-Busch Brewing Association, I refer to the Busch Glass Works,
located at No. 5, the St. Louis Dried Brewers Grains Com-
768 pany, the St. Louis Refrigerator Car Company, and I think it fair to include the Manufacturers Railway itself.

The result of this community of interests is that the brewery controls, through the Refrigerator Car Company, cars in which most of its shipments are made as well as the Manufacturers Railway, which switches the cars to the trunk lines.

The first tracks that were built from the brewery of the Anheuser-Busch Brewing Association were from Ninth street in an easterly direction to the connection of the Iron Mountain Railroad at First street, for the purpose of affording the brewery track connections with the Iron Mountain Road. It was built to enable the Anheuser-Busch Brewing Association to load their outbound traffic at the brew-

ery into cars and to receive its inbound shipments at its doors, instead of teaming its traffic to and from the Iron Mountain and other St. Louis lines. The tracks of the Manufacturers Railway may be divided into three groups, as follows: Those tracks which lie between Fifteenth street on the west, Lynch street on the north, the levee on the east and Arsenal street on the south, which were established and are now operating primarily as a plant facility of the Anheuser-Busch Association and affiliated concerns. The service rendered to the independent shippers and receivers of freight or for those not affiliated with the Anheuser-Busch Brewing Association is merely incidental to the service rendered to the brewing association and its associates.

Within this described territory the following independent industries are served by the industrial tracks of the Manufacturers Railway, viz: A small cooler of Morris & Company, and the St. Louis Dressed Beef and Provision Company, the Schroeter Coal
769 Company, the St. Louis Cooperage Company, the St. Louis Basket Company. The two latter concerns are also served by the tracks of the Iron Mountain Railway, and I should also state that the cooperage company is served by a tunnel underneath the Iron Mountain Railroad and Manufacturers Railway, through which it conducts its raw forest products which may come by river or may be unloaded by rail on the north side into their plant for conversion into cooperage stuff.

The Second street line, north of Lynch street and south of Arsenal street, with its switches and team tracks, appears to serve primarily shippers and receivers of freight independent of the Anheuser-Busch Brewing Association, except at the corner of Second and Utah streets, where there is a reserve coal pile, which I assume is maintained there for the necessary operation of the Anheuser-Busch Brewing Association in case of trouble.

The viaduct over the Iron Mountain tracks by which connection is made with the Wiggins Ferry tracks in the river yard is used principally to accommodate the business of the Anheuser-Busch Brewing Association and affiliated concerns. It is also devoted in part to the use of the independent concerns. In like manner the tracks running between Dorcas and Pestalozzi streets are used to some extent in handling the business of the independent concerns to points of interchange with the Iron Mountain and the Wiggins Ferry.

I consider such service as is now performed by the Manufacturers Railway for the brewery and allied concerns as plant facility service, both as to the nature of the service and because of the fact that the interests and persons who control the brewing association and the allied concerns also own and control the Manufacturers Railway.

To all intents and purposes the Manufacturers Railway sim-
770 ply affords these concerns a plant facility service.

I do not believe that because the Anheuser-Busch Brewing Association or those who own or control it organize a separate corporation to own and operate the certain railway tracks and locomotives intended primarily to serve the brewing association, that it would justify anyone in considering the service performed by the

Manufacturers Railway for the brewing association in any different light than if the brewing association performed its own switching service in its own name with its own locomotives. The services performed by the Manufacturers Railway for the brewery is not in any sense of the word a transportation service, but instead is simply a switching service, which many industrial concerns perform for themselves without asking or expecting railroads to pay them for.

By the term "plant facility service" I mean the service incident to the performance of manufacture or production in which the plant is engaged, or in the preparation of the products of that plant for market, and is a service which is not included in the rate for transportation. For example: The Manufacturers Railway performs three classes of plant facility service for the Anheuser-Busch Brewing Association. First, intraplant service; that is a service that is performed in spotting or removing cars from one point in the yards of an industry to another part of the same industry. For example: The movement of a car from the keg cleaning department to the department where the kegs are filled with beer, that is, from point 102 to point 124. Second: Inter-plant service performed in spotting or removing cars from one industry to another industry on the same industrial road, for instance, a movement of a carload of bot-
771 tles from the Adolphus Busch Glass Works to the bottling plant of the Anheuser-Busch Brewing Association.

Third. A service of switching on an industrial road between an industry and the point of connection or interchange with the transportation line, for instance, the movement of a car to the point of connection with the St. Louis, Iron Mountain and Southern Railway or the Terminal Association, or vice versa, a movement between these points and the Anheuser-Busch Brewing Association. I do not think it possible to separate the property and expenses of the Manufacturers Railway devoted to the service of the Anheuser-Busch Brewing Association from the property and expenses devoted to the traffic of other industries located thereon or served thereby. I find that some of the tracks and other facilities of the Manufacturers Railway are used for the Anheuser-Busch Brewing Association and that the business of independent shippers is handled on that part of the line. This is also true as to the Second street line to the connection with the trunk lines at the foot of Dorcas street. Because this property is so used, I think it impossible to separate the property and expenses except on an arbitrary basis.

In comparing the service performed by the Manufacturers Railway in moving shipments between points within the plant of the Anheuser-Busch Brewing Association and moving loaded and empty cars between plants and trunk lines, with the service performed by other breweries in the City of St. Louis, I note the instance of the Lemp Brewing Company, which is located on the West side of Broadway at the head of Potomac street, which has constructed a cable road which is called the Western Cable Railway, connecting this plant with the tracks of the Iron Mountain at First and Potomac streets. For several years prior to March 1, 1910, the several
772 St. Louis and East St. Louis lines absorbed the switching charge of the Western Cable Railway. Since that date no

allowance has been made except by the St. Louis, Iron Mountain and Southern and the Missouri Pacific. The present charges of the Western Cable Railway are as follows: All outbound commodities, except ice, $3.50 per car, which includes beer. Outbound or inbound shipments of ice, $1.50 per car. Inbound shipments of empty beer, packages returned, $1.50 per car. All other inbound commodities, except coal and coke, $2.50 per car. Inbound shipments of coal and coke, six cents per ton, minimum, $1.50 per car.

This service performed by the Western Cable road or the Lemp Brewery and three other independent concerns served by it is similar to the service performd by the Manufacturers Railway for the Anheuser-Busch Brewing Association and associated concerns, the difference being that in the case of the cable road the motive power is by cable and in the case of the Manufacturers Railway the motive power is locomotives, but both of those services are plant facility services.

Then there are breweries which are not located on any railroad but which team their beer and inbound supplies and materials between the team tracks or depots as the case may be, and their plants, either by wagon, automobile truck or similar vehicle. These breweries are as follows: The Louis Obert Brewing Company, located 2700 South Twelfth street; American Brewing Company, located 2825 South Broadway; National Brewing Company, located at Eighteenth and Gratiot streets; Columbia Brewery, located at Twentieth and Madison streets; Phoenix Brewery, located at 1724 Lafayette avenue; Excelsior Brewery, located at 5 South Seventeenth street; Hyde Park Brewery, located at Eighteenth and Cass streets; Hyde Park Brewery, located at Salisbury and Florissant streets; Green Tree Brewery, located at Ninth and Sidney streets; Grone Brewery, located at 2219 Clark street; Heim Brewery, located at East St. Louis, Illinois.

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These breweries are at a considerable disadvantage compared with the Anheuser-Busch brewery or even the Lemp brewery, because it is unquestionably true that a carload of beer or similar load cannot be drayed through the streets of the City of St. Louis at $4.50 a car or at any figure approximating that amount. No allowance is made to these breweries for the teaming service they perform in getting their shipments to and from a railroad, nor as a matter of fact is it customary or the general practice of railroads throughout the United States to, under similar circumstances, assume such haulage costs or to consider such costs in fixing rates for the transportation of traffic between different points in the country. I have here a statement showing a list of representative breweries at different points in the United States who team their shipments to and from the railroads and who are not paid or made any allowance by the railroads for the service.

(This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 3.)

In the early part of 1906 some of the other St. Louis lines made switching allowances to the Western Cable Railway and the Manu-

facturers Railway. The Louisville and Nashville, neither at that time nor subsequently, has thought that any allowance should be made either to the Western Cable Railway or the Manufacturers Railway, or any industrial line in St. Louis or elsewhere, and it has only made such allowance when forced to do so by the action
774 of its competitiors. I have felt that the making of these allowances gave them an unjust and unreasonable advantage over their competitors not only in St. Louis but elsewhere and was unjustifiable and created unjust discrimination in their favor as against their competitors. We discontinued making these allowances effective March 1, 1910. Subsequently, following the decision rendered by the Commission June 30, 1911, in the Manufacturers Railway Company's case, some of the St. Louis lines resumed making the allowance to the Manufacturers Railway, and for the same reasaons that obtained in 1905, the Louisville and Nashville met the action of its competitors. The present allowance made to the Manufacturers Railway on both inbound and outbound competitive traffic, except coal, is $4.50 per car. The St. Louis rates are now carried by the various Illinois coal mining districts to industries on the Manufacturers Railway, including the brewing association, out of which rates the Manufacturers Railway is allowed a switching charge of ten cents a ton.

The making of this allowance, as in the case of other traffic, was discontinued March 1, 1910, but for competitive reasons, after other lines announced their intention of making an allowance on coal, we were forced to do so, effective August 12, 1911. The general switching charge in St. Louis on coal is ten cents per ton; it is a rate per ton and not a per car rate. The Louis Obert Brewing Company shipped about 28 per cent of its output; the Lemp Brewing Company about 70 per cent; the eight breweries composing the Independent Brewing Association about 25 per cent; the five breweries composing the St. Louis Brewing Association about 23½ per cent.

The Anheuser-Busch Brewery is not only by far the largest
775 brewery in St. Louis, but is reputed to be the largest brewery in the world. Its annual output is understood to be about two and one-half million barrels annually; the Lemp Brewery produces 560,000 barrels annually; the five plants of the St. Louis Brewing Association produce yearly about 700,000 barrels; the eight plants of the Independent Brewing Association about 600,000 barrels; the Louis Obert Brewing Company about 112,000 barrels.

I have a statement prepared showing the cost to the shipper for getting his business to the railroad tracks at St. Louis where it is customary to make shipments or receive property. This statement gives the name of the brewery, the location, the nearest team track, the number of blocks to haul and the cost of haulage.

(This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 4.)

(Mr. Compton was here withdrawn as a witness temporarily.)

AUGUST RUTH, Jr., testified:

I reside at 2704 Glasgow, St. Louis, Missouri. I represent the Independent Photo Optical Company at this time and in January, 1912, was an operator for A. W. Sanders Company, photographers. On January 16th I took photographs of locations on the Manufacturers Railway.

I have here a photograph taken from a point between Lynch street and Pestalozzi street just east of the crossing on Twelfth street, looking southwest to the Thirteenth street yard.

Mr. Colston: I will ask, Mr. Ruth, that you examine these pictures numbered 1 to 13 inclusive with the notes which are attached thereto and say if the pictures were taken by you and represent the facts indicated in the notes and if the notes are correct notes.

776 Mr. Ruth: These here notes are all rechecked and I find they are correct.

These notes show the locations, the date and time.

(These 13 photographs offered and introduced in evidence as Defendant's Exhibits Ruth 1 to 13 inclusive.)

C. B. COMPTON, direct, resumed:

The brewers who haul their beer to the railroads would be at a serious disadvantage as compared with the Anheuser-Busch Brewing Association and the Lemp brewery. By way of illustration, if the Anheuser-Busch Brewing Association had to pay $4.50 per car to get their beer to the railroad and the others who are not located on railroad tracks must pay drayage, it is apparent on the face of it that the Anheuser-Busch Brewing Association would have the advantage of the difference between the cost to them of the service to the railroad and the cost of drayage, but if you allowed the Anheuser-Busch Brewing Association $4.50 for hauling their beer, they will have a further advantage of $4.50 and it will result in the very serious disadvantage to the breweries who are not located on railroad tracks. The difference in cost between the Anheuser-Busch situation and the Lemp situation would be the difference between $3.50 and $4.50, or $1.00.

I filed as Compton Exhibit No. 5 a list of shippers of carload freight in and about St. Louis who are compelled to dray their goods to and from depots or team tracks of the various St. Louis lines at their own expense.

(This paper offered and introduced in evidence as Defendant's Exhibit, Compton No. 5.)

This list is a representative list of carload shippers of St. Louis, the names are given, addresses, the team tracks of the railroad

777 company which is generally used, the approximate distance in blocks from the shipper's plant and the cost to haul shipments per 100 pounds per car based on the minimum weight of 24,000 pounds and per ton. The distances in blocks from the nearest team tracks vary from one to fifteen, the drayage per 100 pounds varies from 1½ cents per hundred pounds to six cents per hundred pounds, according to distance. The 24,000 pound minimum is used

because that is the usual minimum in handling business to and from St. Louis into the territory which is served by the Louisville and Nashville Railroad.

There is no absorption of these changes by railroad companies. I will file as Compton's Exhibit No. 6 a statement giving the names of shippers of carload freight in St. Louis and vicinity who employ tracks or cable of their own, but who are compelled to stand the expense of delivering their freight to the standard rail lines. The names and addresses, the names of the tracks, the expense to reach connection of rail carrier with the various points of interchange and the figures are given in each case. The reference to tariffs on file with the Interstate Commerce Commission are shown.

The Commonwealth Steel Company at Brant City, Illinois, pay $3.50 to reach the St. Louis Merchants Bridge Terminal and C., P. & St. L. and Wabash.

The Detroit Iron Works, East St. Louis, which is a part of the Republic Steel Company, pays $1.00 to reach the Wiggins Ferry, which is a part of the Terminal Association, and the Illinois Central.

Scullin & Gallagher Iron and Steel Company, Manchester, located on the Des Pres Valley Railroad, pays $3.50 to reach the St. Louis and San Francisco Railway and the Missouri Pacific
778 Railway.

The St. Louis Car Company, 8000 North Broadway, pays $3.50 to reach the Iron Mountain and the C., B. & Q.

(This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 6.)

The device used in the movement of this property is in some cases locomotives and in some cases electricity, but whatever expense attached to the movement to and from the industry, of freight handled by railroads, it is not absorbed by the railroads but is paid by the shipper, with the exception of the W. J. Lemp Brewing Company, the last item on the list.

My opinion is that the allowances by the railroads of $4.50 paid to the Manufacturers Railway on business from the Anheuser-Busch Brewing Association, and I speak for the Louisville and Nashville Railroad, as well as others, is an illegal concession; it is the equivalent or it is the real thing, a rebate. By this statement I convict myself of violating the law, but I have met the condition as imposed by other lines and have probably done what is wrong, I don't know, but I do unhesitatingly say that that is an illegal concession.

I think that a man who hauls his beer by team to the Wiggins Ferry tracks or to the Iron Mountain tracks, to which tracks the Manufacturers Railway delivers the beer of the Anheuser-Busch Brewing Association, should have his services paid for if the Anheuser-Busch Brewing Association is to have its service paid for. I do not know that it makes any difference whether this device is a wagon propelled by horses or whether it is an automobile truck or a cable or something that represents a railroad only in appearance.

I do not think it makes any difference what the mode is, they are all to be treated alike, and I do not think that any of them
779 should have a cent for the delivery of the property to the railroad. It is so far as drayed business is concerned beyond all precedent.

It is my opinion that sound public policy demands an entire separation of manufacturing, mining or industrial concerns from transportation, and vice versa; that transportation should be entirely separated from manufacturing, mining or industrial pursuits. I do not think that justice can be done the shipper, I do not think that justice can be done the railroads; I think it is essential that complete divorcement should be had and I do not believe that the discrimination, I will say unjust discrimination, that does exist can be absolutely abolished until this separation occurs.

There are no instances of which I am aware where the Louisville and Nashville Railroad makes a similar allowance to that demanded by the Anheuser-Busch Brewing Association through its Manufacturers Railway, except in pursuance of an order issued by the Alabama Railroad Commission—I haven't the date. The trunk lines at Birmingham, Alabama, absorb a switching charge of $2.00 per car on competitive business handled to and from the tracks of the Birmingham Southern Railroad for the independents. The Birmingham Southern Railroad is the property of the Tennessee Coal, Iron and Railroad Company and it belongs to the United States Steel Corporation.

I have a list of the industries on the Louisville and Nashville Railroad that perform switching service to and from the point of interchange with the Louisville and Nashville, for which service they receive no remuneration.

At Avondale, Kentucky, the Kentucky Distillery and Warehouse Company has a large distillery. It switches business with its
780 own engines between the distillery and the Louisville and Nashville tracks, a distance of two miles.

At Atlanta, Georgia, the Atlanta Steel Hoop, the Georgia Car and Georgia Locomotive Company and the Southern Iron Equipment Company perform their own switching service with their own engines.

At Andrews, Kentucky, the Andrews Steel Company has a large steel mill, has its own engines and performs its own switching service to and from the Louisville and Nashville tracks.

At Big Stone Gap, Virginia, the United States Leather Company has a large extract plant and tannery, switches its business to and from the tracks of the Louisville and Nashville with its own engines.

At Cooper Hill, Tennessee, is located the Tennessee Copper Company, one of the largest copper smelters in the United States and as well a by-product plant of the same for producing sulphuric acid in large quantities. It owns its own engine and performs its own switching service from half a mile to a mile.

At Ducktown, Tennessee, the Ducktown Coal, Sulphur and Iron Company have a copper smelter and produce as a by-product sulphuric acid. It switches its own business with its own engines.

At Holly Springs, Georgia, the Georgia Antique Marble Company has a large marble mill and switches its product from its plant to the Louisville and Nashville with its own engine.

At Mascoutah, Illinois, the Postley Milling Company has a large mill and switches its business between the mill and its own tracks with gasoline engines.

At Memphis, Tennessee, the American Car and Foundry Company has a car plant and it switches its business between the
781 Louisville and Nashville tracks and its plant with its own engines.

At Middlesboro, Kentucky, the United States Leather Company has a large tannery and switches business between the Louisville and Nashville and its own tracks with its own engine.

At New Orleans, Louisiana, the Standard Guano and Chemical Company was a large fertilizer plant and it switches business between the plant and the Louisville and Nashville tracks with its own engine.

At Tate, Georgia, the Georgia Marble Company, the Marble Hill Quarry, the George B. Skinner Company, the Southern Marble Company, all have rails from their quarries and marble mills and they switch business between the mills and the quarries to the Louisville and Nashville tracks with their own engines.

At Anniston, Alabama, the Western Foundry Company has car works and performs its own switching with its own engine.

At Bessemer, Alabama, the United States Cast Iron Pipe and Foundry Company has a large pipe plant and performs its own switching service between the plant and the Louisville and Nashville track.

At Alabama City, Anniston, Bessemer, Birmingham, Bayles, Alabama; Cumberland, Furnace, Tennessee; Ensley, Gadsden, Arlington, Alabama; North Birmingham, Shelby, Ashville, Thomas, Thorsby, Woodward, Alabama; La Follette, Tennessee; Middlesboro, Kentucky, are situated pig iron furnaces that perform their own switching service between their furnaces and their plants and the tracks of the Louisville and Nashville for varying distances.

At Bessemer and Birmingham and Ensley, Alabama, the Tennessee Coal, Iron and Railroad Company Division of the United States Steeel Corporation has pig iron furnaces.
782 It has been seeking an allowance and we have refused, and this question is now before the Commission in connection with the Birmingham Southern case or the case of the Tennessee Coal, Iron and Railroad Company.

At Blackwood, Virginia, Jellico, Tennessee, La Folette, Tennessee, Morley, Tennessee, and Martins, Kentucky, there are coal mines and coke ovens operated by companies that have their own engines and perform their own switching service from the mines and ovens to the tracks of the Louisville and Nashville Railroad.

At Ashville, Alabama, is the Ashville Cast Iron Pipe and Foundry Company that has a foundry and performs its own switching service.

PHILIP MARSH, called for defendants, testified:

I am auditor of the Manufacturers Railway. The Manufacturers Railway maintains all mileage operated by it, including sidings and industrial tracks and the spurs into private industries. I cannot tell you approximately the number of St. Louis Refrigerator Car Company cars kept in our yards. The St. Louis Refrigerator Car Company makes no rental payments for the storage of its cars in our yards. I have nothing to do with the loading of cars nor as to where cars are placed for loading.

C. V. COMPTON resumed his direct testimony:

The figures furnished by the Manufacturers Railway show that for the month of July, 1911, it handled a total of 5,700 cars. Of this number 479 cars were loaded and unloaded by industries located along its Second street line, and by shippers and receivers using the team tracks along that line. Of the total of 479 cars loaded and unloaded on the Second street line, 224 cars were handled at public team tracks which could have been loaded or unloaded on the
783 tracks of the St. Louis Transfer Railway along the levee and their public delivery tracks between Dorcas street on the south and Chouteau avenue on the north, described in yellow on my map. Likewise these cars could have been delivered on the tracks of the Iron Mountain Railway, on the public delivering tracks marked circle "A" between Dorcas street on the south and Chouteau avenue on the north, described in green, just as conveniently without any additional expense to the shippers or consignees, and at a saving of $1.50 to $4.50 per car to the carriers.

If a carload of lumber should be received from Little Rock, Ark., and destined to the consignee in St. Louis, requiring South St. Louis team track delivery, the Iron Mountain Railroad would place that car for delivery at one of the points marked circle "A" in green, and the Iron Mountain Railroad would retain all of the revenue, or, to put it differently, the transportation line would retain the money in its treasury.

If by some solicitation or other persuasion or persuasive suggestions it was requested that that car be delivered on the tracks of the Manufacturers Railway, those tracks shown in red on the Second street line, the Iron Mountain would have to absorb the charge of $4.50 a car of the Manufacturers Railway, in this way depleting its revenue to the extent of $4.50.

The $1.50 is explained in this way: If a car should be received for transportation to St. Louis by an east side line using team track delivery of the St. Louis Transfer Railway, shown in yellow, circle "B," the St. Louis rate would apply to those delivery tracks. If the delivery was required on the Iron Mountain tracks, the direct charge would be $3.00 by the Iron Mountain, so the difference in that case would be the difference between nothing and $3.00
784 for delivery on the Iron Mountain, in green, versus delivery on the Wiggins Ferry or the St. Louis Transfer Railway, in yellow.

If the delivery was made on the Manufacturers Railway (shown

in red) then the line transporting the property would pay $1.50 per car more for the delivery in red than the delivery in green. Of the balance of 225 cars delivered to and received from industries, 166 of them could have been as conveniently switched to and from these industries by the St. Louis, Iron Mountain and Southern at no additional expense whatever, at a saving of $1.50. Briefly, of the total of 5,700 cars handled by the Manufacturers Railway during the month of July, 1911, only 89 cars were handled for account of industries served exclusively by the Manufacturers Railway Company—that is, about three a day. I have this summarized showing the information stated in the memorandum. Before reading it, it is proper for me to say that it is approximately correct. I have undertaken to show the deliveries to the people who receive property on that part of the Manufacturers Railway lying between Lynch street on the north and Arsenal street on the south, and by the process of analysis make the deductions from the grand total of 5,700 cars handled, which would leave all deliveries on the Second street line, and, further analyzing, by deducting team tracks cars from the remainder, it would leave the actual number of cars handled to industries on the Second street line which could not be served by any other line.

Cars not unloaded on Second street line:

Anheuser-Busch Brewing Association	4682	cars	
Morris & Company	29	"	
785 St. Louis Dressed Beef and Provision Company	21	"	
St. Louis Refrigerator Car Company	18	"	
Schroeter Coal Company	83	"	
Manufacturers Railway	11	"	
American Brewing Company	179	"	
Green Tree Brewery	99	"	
National Brewing Company	12	"	
Obert Brewing Company	79	"	
Union Brewing Company	8	"	
			5221

Industries served by Second street line and also by St. Louis, Iron Mountain and Southern Railroad:

St. Louis Cooperage Company	83	cars	
St. Louis Basket and Box Company	63	"	
N. K. Fairbanks Company	20	"	
			166

Industries served only by Second srteet line—Manufacturers Railway:

Fidel-Ganahl Lumber Company	52	cars	
Bradbury Marble Company	5	"	
John Nooter Boiler Works	1	"	

Western Foundry and Sash Weight Company	23	"	
Klauber & Sons	8	"	
			89
Team track cars			224
Total			5700 cars

786 The main tracks of the Manufacturers Railway are those tracks over which traffic moves between the Anheuser-Busch Brewery itself and the point of interchange between the Iron Mountain and the Wiggins Ferry, which run on and between Dorcas street on the north and Arsenal street on the south, and the river front on the east and Thirteenth street on the west.

In this territory are a few industries other than the brewery itself and its allied concerns which are served by the Manufacturers Railway. Commencing at about Dorcas street there is a single track known as the Second street track, which runs north through the center of Second street to Convent street on the north. There are a few private tracks diverging from the Second street track and also some public team tracks. This Second street track starts about Dorcas and runs northward parallel to the tracks of the Iron Mountain Railroad, shown in green, and lying between Dorcas street on the south and Chouteau avenue on the north.

Between Dorcas street on the south and Convent street on the north the tracks parallel those of the St. Louis, Iron Mountain and Southern, and at the greatest distant point they are only 800 feet apart—that is to say, between the red lines of the Manufacturers Railway and the green lines of the Iron Mountain Railroad the maximum distance is 800 feet. And while at Second and Barton streets these tracks cross each other, at Geyer, Carroll and Barry and Convent streets, enumerated as you proceed north, they are only a slight distance apart. At Park and First streets the *time* tracks almost touch one another.

The Manufacturers Railway tracks are shown in red and the tracks of the St. Louis, Iron Mountain and Southern are shown in green. The green tracks of the Iron Mountain are known as the Miller street tracks, and the red tracks of the Manufac-
787 turers Railway are known as the Park street tracks.

In the territory north of Dorcas street and west from the Mississippi River the tracks of the Iron Mountain, also those of the Wiggins Ferry, shown in yellow, which run along the river, serve this territory, and, in fact, better serve this territory than the Second street tracks of the Manufacturers Railway, because the Iron Mountain and the Wiggins Ferry now serve a great many more industries by private tracks and give a great many more public deliveries or team track deliveries than the Manufacturers Railway.

I have not counted the difference between the deliveries on the yellow and green tracks and the deliveries on the tracks of the Manufacturers Railway, shown in red, but at a glance the map will show conclusively that deliveries on the tracks of the Wiggins Ferry

Company and the deliveries on the tracks of the Iron Mountain Railroad are substantially greater, both as to team track deliveries and industrial deliveries, than such deliveries on the tracks of the Manufacturers Railway, shown in red.

With reference to that part of South St. Louis, south of Arsenal street—in other words, south of the various plants of the Anheuser-Busch Brewing Association and southeast of Broadway, the tracks of the Iron Mountain and of the Wiggins Ferry Company serve that particular territory just as well as the tracks of the Manufacturers Railway, with the possible exception of one industry into which the Manufacturers Railway has tracks, and that is the industry of the Fidel-Ganahl Lumber Company. The Fidel-Ganahl Lumber Company is shown on this map in block 112.

The Iron Mountain Road and the Wiggins Ferry have a number of public delivery tracks along the river front and along
788 First street, as well as in the vicinity of Barton and De Kalb streets, also at Marine street on the south. The team tracks in the case of the Iron Mountain, shown in yellow, do not extend as far south as Marine street, to and from which tracks industries and concerns not now served by the private tracks of the Manufacturers Railway can handle their business. I mean by that that there is a great territory south of the territory described *in* this map which is served by the tracks of the St. Louis, Iron Mountain and Southern. It has deliveries all the way from Chouteau avenue on the north to Carondelet on the south. Marine street is intermediate with Carondelet on the Iron Mountain, between the Anheuser-Busch Brewing Association and Carondelet.

My deduction from this is that that territory is well served and has been well served for years. I think the picture before us shows conclusively that the deliveries have been and can be made as well or better from the tracks of the Wiggins Ferry and the St. Louis, Iron Mountain and Southern.

Beginning with the Anheuser-Busch Brewing Association because it is well known that it is served by the Manufacturers Railway, we have the Adolphus Busch Glass Works, the St. Louis Refrigerator Car Company at Third and Dorcas streets, and the St. Louis Dried Grain Company at Main and Pestalozzi streets. These industries are located exclusively upon the tracks of the Manufacturers Railway, that is, these industries are served by private industry tracks diverging from the main line and are not served by any other railroad. The list of independent industries served exclusively by private tracks of the Manufacturers Railway is as follows: Starting on the south, the Fidel-Ganahl Lumber Company, Broadway,
789 Second and Cherokee streets; the Bradbury Marble Company, at Second and Convent streets; the John Nooter Boiler Works, at Second and Park streets; Western Foundry and Sash Weight Company, at Second and Miller streets; the St. Louis Lumber Company, at Second and Lami, Barton and Broadway streets; the United States Arsenal, at Main, Arsenal, Second and Utah streets; Morris Company's cooler, at Broadway and Pestalozzi street; St. Louis Dressed Beef and Provision Company's cooler, at Broadway

and Pestalozzi street; the Schroeter Coal Company, at Third and Dorcas streets; Klauber and Sons, at Second and Louisa streets; P. Heibel and Son, at Second and Barry streets.

I file as Compton's Exhibit No. 6 a statement giving a list of industries located exclusively on tracks of the Manufacturers Railway, independent of the Anheuser-Busch Brewing Association, showing the distances to the nearest team tracks of each of the lines named. The location of the nearest available receiving and loading tracks by rail carriers is shown as to the St. Louis, Iron Mountain and Southern and as to the St. Louis Transfer Railway. The distance is shown in blocks between the industries enumerated as to both the Iron Mountain and the St. Louis Transfer Railroad.

(This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 6.)

I file as Compton's Exhibit No. 7 a statement showing industries located exclusively on the Manufacturers Railway, showing date they were built or located at their present location and date switch or siding of the Manufacturers Railway was constructed into the plant. The name is given, the tracks, the date of present location and the date switch or siding of the Manufacturers Railway was constructed.

790 (This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 7.)

The Fidel-Ganahl Lumber Company at Broadway, Second and Cherokee was located in 1900. The track of the Manufacturers Railway was constructed into its plant in 1909. The Bradbury Marble Company at Second and Convent streets has been there since 1888. The Manufacturers Railway constructed its track into that plant in 1909. The John Nooter Boiler Works at Second and Park was located in 1910 and the Manufacturers Railway built tracks into this plant in 1910, on the property of the Manufacturers Railway or the Anheuser-Busch Brewing Association or some officer or some person connected with that institution. However, I am not prepared to prove this.

The Western Foundry and Sash Weight Company at Second and Miller streets has been located since 1887. The track was built into that industry in 1910. The St. Louis Lumber Company at Second and Lami was located in 1911, and tracks constructed in 1911. That property was served by the St. Louis, Iron Mountain and Southern before it was served by the Manufacturers Railway. It is served now by the Manufacturers Railway. Lumber is piled on this switch of the Iron Mountain. This company is not served by the Iron Mountain Railroad at this time. The United States Arsenal has been in its present location since 1821. I do not know the date the Manufacturers Railway constructed its track. The Schroeter Coal Company at Third and Dorcas was located about 1900 on the ground of the Anheuser-Busch Brewing Association. Morris and Company and the St. Louis Dressed Beef and Provision Company at Broadway and Pestalozzi street were both located about

1902, and tracks constructed about that time. They are lo-
791 cated on ground of the Anheuser-Busch Brewing Association. G. Klauber and Sons, at Second and Louisa streets, located in 1911 and the tracks built the same year. P. Heibel and Sons, at Second and Barry, located in 1912 and track built at that time. That portion of the Manufacturers Railway north of Dorcas street to the extreme north end at Convent street affords comparatively few facilities to the concerns and industries in that territory that were not afforded by the Iron Mountain and the Wiggins Ferry. These latter companies afford much better and more ample facilities than does this portion of the Manufacturers Railway.

Of course this is not true as to those few industries which are served exclusively by private tracks of the Manufacturers Railway which I have described in the exhibits filed showing their names.

That portion of the Manufacturers Railway south of Arsenal street in other words, south of the Anheuser-Busch Brewing Association plants, affords but two facilities for team or public delivery tracks, these being located at Zepp and Second and Utah streets. The track at Second and Utah is a spur. I would estimate it to be probably 100 feet long. It is immediately outside the fence of property that is used by the Anheuser-Busch Brewing Association as a reserve coal storage yard. There is but one industry on the Manufacturers Railway south of Arsenal street and that is the Fidel-Ganahl Lumber Co.

There is a track inside of the reserve coal storage yard of Anheuser-Busch, but it is evident from the location of it that the coal is piled entirely over the track, that is, the track is out of existence so far as its use is concerned as a sidetrack to an industry. The coal pile seems to have been made by crane or otherwise from the track just outside of the coal yard.

792 The Manufacturers Railway has team tracks on the property located within the Anheuser-Busch terminals at Ninth and Dorcas and Twelfth and Pestalozzi streets, which afford to the shipper or receiver only slight advantage in haul. But such facilities do not cause the shippers to be dependent upon the Manufacturers Railway for transportation facilities, as they are within easy access of public or team tracks of the St. Louis, Iron Mountain and Southern on First street and the Wiggins Ferry on the levee. Those team tracks are shown in the case of the Iron Mountain in green circle A, and of the Wiggins Ferry in yellow circle V, and lie between Convent street on the north and Dorcas street on the south as to the Wiggins Ferry, and between Convent street on the north and Marine street on the south as to the Iron Mountain.

I would say that all the railroad facilities in South St. Louis serve that section equally as well, if not better, than the tracks in St. Louis serve other sections of St. Louis. The railroads seem to have constructed team tracks to serve that territory wherever needed. They seem to have built tracks into industries wherever needed and I would say that that section of St. Louis is well served, and I do not believe that any other part of St. Louis is better served than South St. Louis with railroad facilities. The St. Louis Iron Moun-

tain and Southern and Missouri Pacific combined serve more than fifty per cent of the industries in the City of St. Louis.

Considering the additional service which would be required of a switching line to make deliveries at industries or public team tracks on the Missouri Pacific Railway instead of deliveries along the river front at the points of interchange of that line with the Wiggins Ferry and the Iron Mountain on the theory that the addi-
793 tional lines belong to the same company which performed the previous service, and I had charge of all the railroads, I would make a uniform switching charge to and from all that territory between Convent street on the north and Potomac street on the south. I would consider that territory one zone and make a uniform switching charge to and from it and in connection with the connecting lines at Dorcas street. The Iron Mountain Road does not charge more for making deliveries to industries such as those in the vicinity of Barton street and Broadway, those which are more distant from the river front, than some of the industries on the Manufacturers Railway, than the Iron Mountain charges for making deliveries along First street in that vicinity.

The rails of the Iron Mountain Railroad extend on Barton street shown in green and cross the Manufacturers Railway at Second and Barton streets. The charge is the same, uniformly ½ cent a hundred, minimum $3 per car to and from connections of the Wiggins Ferry Company in South St. Louis. To illustrate: If a carload of freight was received by the Iron Mountain Railroad, it would make delivery at the St. Louis rate at Second and Broadway or at any other point on the Barton street track. It serves that territory very well indeed. If the Iron Mountain Railroad was required to make delivery on the tracks of the St. Louis Lumber Company, the revenue of the Iron Mountain would be depleted to the extent that it absorbed the trackage charge of the Manufacturers Railway, which today is $4.50 a car.

Now, an illustration relating to the Louisville and Nashville which reaches East St. Louis from the south: If this delivery was made at Second and Broadway by the Iron Mountain Railroad it
794 would cost the Louisville and Nashville in absorptions $3 a car. For the privilege of making Manufacturers Railway delivery it would be necessary for it to absorb $4.50 a car. Now, if that was a terminal track delivery, the L. & N. Railroad would be in exactly the same position as the Iron Mountain with respect to the $4.50 a car for this reason: The St. Louis rate applies, includes team track delivery, circle B in yellow, and the L. & N. Railroad retains its revenue. If it delivers the property to the team track of the Manufacturers Railway it would have to deplete its revenue to the extent of $4.50 a car.

In the event the Interstate Commerce Commission decides that the Manufacturers Railway should be made an allowance on traffic switched between industries and tracks on its lines and interchanges with the Wiggins Ferry Company or the Iron Mountain, it would result in what might be termed a compound system of absorptions. For instance, the Second street line of the Manufacturers Railway

stops about midway between Zepp street and Potomac street on the south, and is turned in the direction of the Lemp Brewery. The Lemp Brewery being now served by its own cable line, would pay $3.50, Anheuser-Busch $4.50, being a total absorption of $8, and so on and on indefinitely until every link of the chain was taken up and there would be no revenue to the carriers.

Examiner Mackley: How do you get the $8? Do you mean if he wanted to attach his road and connect it with the Manufacturers?

Mr. Compton: Yes, he would want to connect it with the Manufacturers and get $3.50 for that service and get $4.50 for this.

Examiner Mackley: Do you think there is any chance of the Manufacturers Railway allowing the Lemp Brewery line to connect with it?

795 Mr. Compton: I can only answer that by a suspicion, because when you see the thing on the ground it looks to me like it is pointing in that direction.

Mr. Kirby: Pointing toward the brewery but not toward the Western Cable Company.

Mr. Compton: We have no hopes of connecting with that road. We do hope to connect with the brewery though.

Now as to the allowance of the Manufacturers Railway. It demands that we allow it an additional $4.50 a car for delivering a carload of lumber to the same lumber yard as we deliver on the Wiggins Ferry tracks. I think we should not be required to deplete our revenue for the pleasure of giving this business to the Anheuser-Busch Brewing Association for switching. Take, for instance, a shipment of beer which the American Brewing Company, located on the west side of Broadway near Dorcas street, would make to Evansville, Ind. We would have to pay the Manufacturers Railway $4.50 a car and the Wiggins Ferry Company $3.90, or a combined switching and transportation charge of $8.40, leaving to the L. & N. Railroad only $17.60 for its transportation service from East St. Louis to Evansville, the through rate on the shipment of beer from St. Louis to Evansville being on 26,000 pounds at ten cents per hundred pounds, $26, and out of this revenue we would pay mileage for 332 miles, namely $2.40, leaving us $15.18. Now it is proper to state here that in making this calculation I used 161 miles to Evansville and 161 miles from Evansville to East St. Louis for the reason that the car is hauled back empty without charge. Now in connection with that same matter we should not lose sight of the fact that we carry not less than three tons of ice for nothing. That is to say, that there are from three to nine tons of ice transported free in these cars, so that all of the weight carried by the trans-

796 portation company is not reflected in the weight shown on the bill of lading.

I have an illustration here in regard to the handling of a carload of coal from mines in Illinois on the L. & N. Railroad and what is true with respect to the L. & N. is true with respect to all East St. Louis lines handling coal at East St. Louis from the Illinois coal fields from mines on the St. Louis division of the L. & N. Railroad as far east as Lynch, Ill., which is 22 miles east of East St.

Louis. The rate on coal to East St. Louis is 32 cents per net ton, the rate to St. Louis, Mo., is 52. I think I explained that we absorbed switching on coal, as we were obliged to either absorb this switching or go out of the business. Now out of this rate we pay 20 cents a ton for the transportation service from East St. Louis to point of interchange with the Manufacturers Railway. The Manufacturers Railway allowance is 10 cents a ton, thus leaving us for our haul to East St. Louis 22 cents per ton, and we furnish the car and do the work at a minimum charge. It does not seem to me that the railroads should have to give up this money. There should be some way of saving it.

In regard to that particular section of South St. Louis wherein are located many industries now served by the Manufacturers Railway, being inaccessible to the lines of other railroads because of the existence of a bluff, I do not consider that a bluff exists there. This section of South St. Louis is between Lynch street on the north and Arsenal street on the south. That territory is served well, in my opinion, by the tracks of the Iron Mountain road, shown in green, and the tracks of the Wiggins Ferry, shown in yellow, in the territory north of the brewery plant and in the territory south of the brewery plant from Marine street. It is true that in the sec-
797 tion north of Dorcas street the land lies a little lower than it does in the vicinity of the Anheuser-Busch Brewing Association, but that does not, in my opinion, indicate that that part of South St. Louis or that part of St. Louis is not well served by team tracks of the Iron Mountain and Wiggins Ferry.

It is contrary to all precedent to undertake to equalize against a natural location. The rates of all railroads are made to and from the depot. Simply because someone happens to be located on a hill is no reason why we should pay him a drayage. No traffic man would undertake to make a less rate from his depot because somebody was located on a hill than if he was located on a flat.

Examiner Mackley: Right there, if I may interrupt for one question: What governs the question whether or not a road's terminal facilities shall be extended to some industry; for instance, take an industry located on this bluff, or located any place else off the main line, is there any general or set policy that will govern the extension of a roads's rails to a particular indusery or to a particular section of a town?

Mr. Compton: Answering the last question first, I would say this, that there is no fixed rule for the construction of industrial tracks except this might be considered a fixed rule or fixed principle. In considering industrial tracks, I would say for the L. & N. Railroad that if we could secure the location of a valuable shipping industry on our line we would solicit him pretty strong and get him to locate there. We would give him our terms for the construction of sidetracks. We would expect him to have that work done at his expense. That expense is sometimes divided in this way, he pays for the rails and the ties and the grading, or he can pay for the grad-
798 ing and the ties and lease the superstructure.

Examiner Mackley: That is, in the case of an industrial

track. Now what governs the extension of your terminal, your main terminal track? Is there anything that governs that?

Mr. Compton: I would say no, there is no fixed rule.

Examiner Mackley: That depends on conditions?

Mr. Compton: That depends on conditions that present themselves, yes, sir.

The tariff of the Manufacturers Railway at present is I. C. C. No. 13. It provides first a switching charge of $1 per car for moving cars between various plants of the Anheuser-Busch Brewing Association. It provides a switching charge of $2 a car from an independent industry or team track on the Manufacturers Railway to the brewery or to any other independent industry, or vice versa, of $2 per car. The charge for switching business between industries and team tracks on the Manufacturers Railway and the Wiggins Ferry and the St. Louis Iron Mountain and Southern tracks, when the charges are not absorbed by the rail carrier, is $2 per car. The charge between the industries and team tracks of the Wiggins Ferry and the Iron Mountain, when the charges are absorbed by the railroads, is $4.50 a car.

I can see no reason why there should be a greater charge for switching a car when the trunk lines absorb the charge than when they do not. Take two cars located on the same track with the same freight in them, moved at the same time to the same connection, with absorption in one case and no absorption in another—it is obvious to me that it costs as much in one case as it does in the other.

799 In regard to the charge of $1 per car, or $2 per car, as the case may be, for intra or inter plant switching, as compared with the $4.50 charge for switching cars between the team and the industrial tracks of the Manufacturers Railway and the interchange with the Wiggins Ferry and Iron Mountain, it seems to me that this makes it still more unreasonable, because it seems to me that when you perform a greater service for less money it is evident that it is wrong. Therefore, I say that the switching charge ought not to be in excess of $2, if $2 is remunerative. I have tried to analyze the necessity for the extension of the Manufacturers Railway up Second street, and I cannot see why that line was constructed. I do not look upon this line as being a necessity at all.

I file as Compton Exhibit No. 8 a list of manufacturers and shippers, located on the Manufacturers Railway that are served exclusively by the industrial tracks, showing character of their business. This exhibit shows the name of the industry, character of the business, how served and its location.

(This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 8.)

I file as Compton's Exhibit No. 9 a statement showing shippers located exclusively on the Manufacturers Railway, showing their location, character of business, switch connection, amount of switching necessary to reach certain rail carriers, and list of representative competitors not having any rail connections, but having to team their

freight to reach the rail carriers, name of the industry or concern, its location, character of the business, switching charge of the Manufacturers Railway to its connection, the drayage borne by the shipper to and from team tracks most generally used, the latter being competitors of those doing the same business on the Manufacturers Railway. First, the Fidel-Ganahl Lumber Company, located
800 at Second and Cherokee streets, are in competition with Prendergast Lumber Company at Twelfth and Market. The Fidel-Ganahl Lumber Company, according to the Manufacturers tariff, would pay $2 a car, and Prendergast would pay 3 cents per hundred pounds. On a 30,000 pound car the difference would be, of course, $7 against the Prendergast Lumber Company.

Second, the Bradbury Marble Company at Second and Convent streets. The marble works would pay $2 to the Manufacturers Railway for switching to the Wiggins Ferry or the Iron Mountain, while the Pickel Marble and Granite Company, 1901 North Broadway, a marble works six blocks from the Wiggins Ferry, would pay 2½ cents per hundred pounds. Based on a 30,000 pound car, the difference in favor of the Bradbury people would be $5.50 a car.

The other industries dealing in other classes of business would be at similar or approximately similar disadvantage because they have to dray their property to the railroad, and in the case of the industries on the Manufacturers Railway have to pay a switching charge of $2 per car.

(This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 9.)

During the time the Iron Mountain road leased and operated that portion of the Manufacturers Railway in existence, that is, outside the yards of the Anheuser-Busch Brewing Association, it charged the same for switching a car on the line of the Manufacturers Railway as it charges now for switching a car to and from Iron Mountain tracks shown in green, and the connection with the Wiggins Ferry on the levee.

The switching tariff of the Iron Mountain Railroad showed that they switched business to the following industries located
801 on the leased tracks: Anheuser-Busch Brewing Association, A. Busch Glass Works, St. Louis Dressed Beef and Provision Company, Morris and Company, St. Louis Dried Brewers Grain Company, R. Stecher Cooperage Company. Assuming that a part of the Manufacturers Railway is a plant facility of the Anheuser-Busch Brewing Association, the effect of making allowances to the Manufacturers Railway on the traffic of industries independent of the Brewing Association would be that the Anheuser-Busch Brewing Association would make a profit on all of the traffic they handle for the independents, at least to the extent that such traffic handled would necessarily relieve the plant facility of a portion of its overhead or fixed expenses.

Assuming that it is proper to make some allowance to the Manufacturers Railway for service performed by it in moving cars to and from the interchange with other roads, the traffic of the independ-

ent industries, I would say that the amount charged by the Manufacturers Railway for interplant switching, namely, $1 a car, ought not or should not be exceeded. In my opinion no allowance whatever should properly be made, either on the traffic of the Anheuser-Busch Brewing Association or affiliated concerns, or upon any traffic of the independents, but if it should be proper to make the allowance on the traffic of the independents, I do not think that those allowances should exceed, first, the charge for intra-plant service of $1; second, they should not exceed the intra-plant service of $2 per car; third, they should not exceed the charge for moving a car where the switching charge is not absorbed. In the case of movement of a car to the Wiggins Ferry tracks or to the tracks of the St. Louis Iron Mountain and Southern, $2 per car; fourth, that such allowance should not be as much as any of the fore-
802 going, or the three measures I have just described, if such allowance would afford the Manufacturers Railway more than that added cost to it of doing the service, because if the Manufacturers Railway makes a profit on its business, such profit takes up a part of the overhead or general expenses of the Anheuser-Busch Brewing Association and would redound to the interest of the Anheuser-Busch Brewing Association. I say redound to the benefit of the Anheuser-Busch Brewing Association because it is a plant facility of that institution.

I have analyzed the list of industries shown in the Manufacturers Railway switching tariffs located on its lines, and file exhibit marked Compton Exhibit No. 10, which is a list of industries shown in the Manufacturers Railway publication, I. C. C. No. 13, F. A. Leland's switching tariff I. C. C. No. 24, as being located on the Manufacturers Railway. This tariff list is erroneous and misleading. For instance, the tariff shows that the American Brewing Company is an industry on the Manufacturers Railway located at Broadway and Pestalozzi street. Now the actual location of that brewery is at Broadway and Lynch street and it is a block and a half away from the Manufacturers Railway. The tariff list follows through from A to W, showing some 38 industries, whereas they are not on its tracks. They are from one to thirty-two blocks distant from the Manufacturers Railway.

This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 10.)

I file as Compton's Exhibit No. 11 a statement showing movement of freight in private car line cars from St. Louis, Mo., during the months of September, October and November, 1911, showing the return movement of such cars loaded with empty packages on account of the Anheuser-Busch Brewing Association. The
803 forwarded movement is shown, the date of each movement, the car number and initials, name of the shipper, destination, junction by which the business moved, contents, weight, total revenue through to destination, L. & N. revenue, Terminal Association transportation charge across the Mississippi River, the Manu-

facturers Railway allowance which was made by the L. & N. Railway.

It shows to the right the movement of the empty packages which were returned, with similar information as to the earnings on each return movement. As shown the mileage is from East St. Louis to the junction points where the business left the rails of the L. & N. Railroad.

(This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 11.)

This statement does not take into account the question of mileage either going or returning, or of the weight of ice.

Take the first car on the list, September 7, 1911, to Chattanooga, Tenn., via Nashville. The L. & N.'s revenue was $43.81 for a transportation service of 316 miles. The Manufacturers Railway was allowed $4.50 for handling the car for not more than half a mile, whereas the railroad got but $43.31 for handling the car 316 miles. The Manufacturers Railway received ten per cent of the L. & N.'s revenue.

It seems to me that is a pretty stiff allowance as compared to the earnings of a railroad for handling a carload of freight 316 miles.

Take the last car on this list: The L. & N. received $28.38 for handling that car from East St. Louis to Nashville, and the Manufacturers Railway received $4.50, or the difference in mileage the same as in the previously mentioned car. That is to say,
804 the Manufacturers Railway received $4.50 for a half mile haul, and the L. & N. $28.38 for a haul of 316 miles. The round trip mileage to Nashville would be 632 miles, and the mileage paid on the car in dollars would be $4.74, so that instead of receiving $28.38 for our treasury, we actually received but $23.74.

Now, as to the return packages shown on the right of the statement. The first car was loaded with beer packages at Jacksonville, destined St. Louis, and delivered to the L. & N. at Montgomery. The car weighed 14,170 pounds. The L. & N. received $16.41, the proportion of the rate accruing to the Terminal Association was $1.06 for its movement from the L. & N.'s connection at East St. Louis to the connection with the Manufacturers Railway at St. Louis. The Manufacturers Railway received $4.50, or more than four times as much as the Wiggins Ferry received.

Take the car from Cordele, Ga., which contained 8,400 pounds of returned empties. Instead of charging for 8,400 pounds we charged the minimum weight of 10,000 pounds, as specified in the tariff. The L. & N.'s proportion was $15.45, the Wiggins Ferry received 75c. and the Manufacturers Railway received, well, six times as much for removing a car from the Wiggins Ferry connection to the Anheuser-Busch Brewery as did the Wiggins Ferry for their cross-river haul.

The exhibit speaks for itself, and it can readily be seen just what percentage the Manufacturers Railway allowance bears to the revenue received by the L. & N. for the transportation of the property. This statement is made to show the forwarded cars and the same

cars returned with packages. It does not indicate that all the cars come back empty. Some of the cars may have come back loaded with empty beer packages later. However, that is not signi-
805 ficant for the reason that what is true with respect to the remainder of the cars is shown on the exhibit to the right indicating the earnings received on the empty packages, and if these remaining cars did come back empty, they are not shown.

It is possible some of these cars may have come back via other lines. However, it is customary for the line hauling the business out to haul the return empty. It would be unfair for the owner of the car shipped to Montgomery, Ala., for illustration, by the Louisville and Nashville Railroad, to ask the Mobile and Ohio to haul the empty back, and likewise it would be unfair to ship a car to Montgomery via the Mobile and Ohio and ask the Louisville and Nashville to bring it back.

I have prepared an exhibit covering the forwarded movements shown by my previous exhibit, but which indicates in addition the mileage allowance on the round trip and the deductions therefor.

(This statement offered and introduced in evidence as Defendant's Exhibit Compton No. 12.)

This exhibit shows the movement of freight from the Anheuser-Busch Brewing Association in private car line cars from St. Louis, Mo., to southern points during the months of September, October and November, 1911, and including mileage paid on returned movement of such cars empty to the Anheuser-Busch Brewing Association. The items in this exhibit are the same as the items in the previous Exhibit No. 11. The difference in the two is simply that the round trip mileage is shown and deducted from the gross revenue earned. It is my understanding that in the shipment of keg beer and keg and bottled beer mixed, by the Anheuser-Busch Brewing Association, loading cars in the yard at Broadway and Arsenal street, that the beer in kegs is hauled from the brew house by team
806 or motor truck and loaded at this point. Likewise the bottled beer is hauled from the bottle establishment to the loading yard at Arsenal and Broadway—that is, when bottled beer is shipped with keg beer. The hauling, of course, is over streets and might as well be continued to the tracks of the Iron Mountain Railroad, but of course the $4.50 is an attractive amount of money, and rather than haul it down to the Iron Mountain Railroad it is hauled to the tracks of the Manufacturers Railway, so in that case the tracks of the Manufacturers Railway do not serve the brewery except to take business as hauled to it by teams.

I heard Mr. Watson, the assistant general freight agent of the Cotton Belt, make reference to the inter-plant movement at the Laclede-Christy plant. I am sure he inadvertently misconstrued the tariff to which he referred (Missouri Pacific and St. Louis Iron Mountain and Southern, I. C. C. 1621, effective August 16, 1911, page 91, item 51, and page 12, item 29), of the same tariff, reading as follows:

"Cars placed as per instructions at a point in the industry and

ordered moved to another point within the same industry, $1.00 per car will be charged."

In my opinion the intent of that note is to provide for a second movement—that is to say, in a case where a car is received and partially unloaded and is then moved to another point in the same plant for the unloading to be completed, the service will be performed for $1.00, and vice versa, if the shipment be an outbound shipment.

It impressed me as being peculiar that a railroad would undertake to do inter-plant work for less than cost. Inquiry was made of the agent of the Missouri Pacific Railroad as to the application of this tariff, and he responded no, that if such movement did
807 take place that the charge would be one cent a hundred—minimum $5.00 a car. However, I will say that this tariff is susceptible to the construction given it by Mr. Watson of the Cotton Belt.

I have had prepared a map which I think will be of interest to the Commission. It may appear to be crude, but I think it contains a great deal of substance. Using this map in connection with Agent Leland's tariff for East St. Louis terminal lines, being Switching Tariff No. 1, I. C. C. 924, it will give you information that will show at a glance just what the switching rates are in St. Louis to and from all connecting lines—that is to say, it will give a ready reference so that one may see at a glance just the switching rates in St. Louis; and I have in connection with that map a table showing relative values in miles and fractions thereof. The map is scaled one and three-eighths inches to the mile. This table is made to show, in the event you wish to measure the haul, just the amount of the charge for that mileage, the rates being set forth in the tariff to which I have referred. By way of illustration, if you take a rule and place it at No. 47 on the Wabash Union Depot line and measure to Ferguson, to a connection with the C. B. & Q. at point 40, it will give you the number of miles.

In South St. Louis the Iron Mountain tracks are shown in green on Compton's Exhibit 1, and the tracks of the Wiggins Ferry are shown in yellow. On this map accompanying this tariff the Terminal tracks are shown beside the tracks of the Manufacturers Railway, and the charge to and from that connection is $1.00 a car, whereas the trackage charge of the Manufacturers Railway is $4.50 a car.

The result of these comparisons, generally speaking, shows
808 that the average rate charged by all these lines for switching competitive business are less than the rates on the Manufacturers Railway.

(Map and statement offered and introduced in evidence as Defendant's Exhibit Compton 13 and 14.)

I have not undertaken to make individual comparisons, but I can do so without difficulty. If anyone wishes a rate between any point to and from any industry in St. Louis to a connecting line I am prepared to give it.

(Switching Tariff No. 1, I. C. C. 924, effective July 21, 1911,

issued by F. A. Leland, Agent, offered and introduced in evidence as Defendant's Exhibit Compton No. 15.)

I desire to make a change in Compton's Exhibit No. 1 by changing the green tracks Nos. 107 and 108 to red. The track was connected up with the Iron Mountain Railroad, but has since changed to the Manufacturers Railway, and the industries on that track should be shown in the list of industries on the Manufacturers Railway.

Cross-examination by Mr. Kirby:

I think the Louisville and Nashville Railroad has a very considerable interest in this case. It is a fact that the interchange business transacted between the Manufacturers Railway and the Louisville and Nashville Railroad is small. In stating that the Louisville and Nashville Railroad had a considerable financial interest in this case I had in mind the reflection of these allowances. While true that the business handled in connection with the Manufacturers Railway is small, it is also true that a great principle is involved that may lead to demands on the parts of others for allowances of the same
809 character, so indirectly the Louisville and Nashville has a great interest.

It is not a fact that the Louisville and Nashville is fighting this suit, not because of any substantial financial interest it has in this particular controversy, but because it hopes to make the decision in this case an example or precedent in other litigation in which it either has or expects to have substantial interests, but it desires to have this question settled and it thinks that this is a good time to do it and that it is a good case in which to have it settled.

I know nothing about the expenses of the legal matters of the Louisville and Nashville and therefore am not prepared to say that it does not care how much money it expends to settle a lawsuit in which its own financial interest is a comparatively insignificant amount. My position with the Louisville and Nashville Railroad is an important position and as an officer of that road my duties and time are very important to its welfare. I attended the first hearing in this case in 1910, which consumed from a week to ten days. I attended the hearing before Examiner Mackley in January last and have attended all the sessions of this present hearing. These numerous exhibits that I have introduced at this hearing were prepared by my office force under my direction. I am not able to state how much time was consumed in the preparation of this data. Generally will say that several men were engaged several days, and by several days I mean two or three weeks.

I have visited St. Louis for the purpose of going over South St. Louis and examining personally the terminal conditions in St. Louis before I testified in this case. Last January I spent the greater part of a day in going over the facilities of the Manufacturers Rail-
810 way, and on Wednesday of this week I spent the afternoon, and in my rooms since that time I have studied the terminal situation in St. Louis. I do not reside in St. Louis, I reside in Louisville, Kentucky. I have never lived in St. Louis.

The only examination I have made of the physical properties of the Manufacturers Railway was made during a period of two days. I have been coming to St. Louis for many years and there is very little of St. Louis that I have not been over at different times; the same is true of East St. Louis. I cannot tell how many times in my life I have been in St. Louis, but I have been here a great many times and have seen the tracks and facilities often. My particular investigation of the Manufacturers Railway was confined to a fraction of two days. I have spent no time whatever in looking into the question of the operation of the Manufacturers Railway, no time at all.

Mr. Kirby: You have used in connection with your testimony a blueprint of considerable size, illustrating the relative layout of the Iron Mountain Railway south of Chouteau avenue, the Wiggins Ferry and the Manufacturers Railway Company. When was that map prepared?

Mr. Compton: That map was prepared in January, 1912, and brought down to date by me or under my direction since my arrival in St. Louis.

Mr. Kirby: In connection with that same map you have offered a list of industries served in that territory—may I ask you where did you get the data from which you compiled that list of industries?

Mr. Compton: It accompanied the map at the time, in January or February, 1912.

Mr. Kirby: You mean so far as you know it was already in existence, you did not get it up?

811 Mr. Compton: Oh, I didn't make that map, no.

Mr. Kirby: Was the map made under your directions?

Mr. Compton: No, sir.

Mr. Kirby: Is it not a fact, Mr. Compton, that the map which you have produced and used today is substantially the same map which has heretofore been introduced in evidence in this case in the former hearing, and that the only differences between the map you have used and that former map consists in the fact that it is perhaps a little larger and that you have made certain changes in the map that you used today to evidence changed conditions and bring them down to date as you understood them?

Mr. Compton: I am not undertaking to make any comparison between this map which I have filed as Compton Exhibit No. 1 with any map filed by the witnesses for the Manufacturers Railway Company or any other witness. What I have endeavored to do is to bring this map down to date and let it be Compton's No. 1. Now if there are any inaccuracies in it——

Mr. Kirby: I am not talking about inaccuracies, Mr. Compton. I want to prove by you, now, that this map which you are offering as an exhibit with your testimony, is substantially the same map which was before this Commission when they decided this case, to the extent that it is already decided, the map before the Commission on the argument of this case, which now hangs before us, and I ask you to compare these two maps and state whether or not they are not substantially the same as to these railway conditions in South St. Louis, except as I have indicated, the changes made by you on your map

bring it down to date. Won't you step up and look at the maps and make the comparisons now. I would like the record to show
812 it is substantially the same situation as to the comparative layout of these three roads in South St. Louis.

Mr. Compton: I have looked at that map since we had this short recess and I do not think that map is as complete as this map, and so far as I am concerned, I am not willing to put that map—and in saying that map I mean the map filed by the Manufacturers Railway—in my testimony. I don't know anything about that map. Now if you desire to make a comparison you can make a comparison, but I have filed my map and I don't think you have any right to ask me—excuse me, I don't think you oughet to ask me to sit here and compare a map which your witness filed with a map that I have filed.

Mr. Kirby: If you will pardon me, that is exactly what I have got the right to do. You are a witness producing a map which you say fairly represents the situation as it exists today so far as you know. I do not question that you do think it a fairly representative one, nor do I question that it is, but I ask you to compare that map with the map which the Commission had before it as an exhibit previously filed in this case and which was before the Commission when this case was argued, and to state for this present record, whether these two maps do not disclose substantially the same situation as to the comparative layout of these three roads in South St. Louis.

Mr. Compton: Mr. Kirby, I do not know how long it will take me to make that comparison. I don't know whether it will take me ten minutes or ten hours or ten weeks, but it might take me ten hours.

Mr. Kirby: I think you can make it in ten seconds if you will look over one map and then the other.

Mr. Compton: No, sir, my eye does not carry through that fast, I couldn't do it.

813 Mr. Kirby: If you are as familiar as you say with the layout of these roads in South St. Louis, I think a very brief time will enable you to draw a substantial comparison between the maps, and that is all I ask of you.

Mr. Compton: I will be willing to take Compton's No. 1 and the map exhibited there and compare them and furnish that to the Interstate Commerce Commission, but I cannot do it right at this minute. Now when I say that I don't mean to be in the slightest contrary or obstinate at all.

Mr. Kirby: Will you look at the map which hangs in this room and which is the exhibit heretofore filed in this case, and which was before the Commission when this case was argued, and look at that part of the Manufacturers Railway which serves the Anheuser-Busch Brewing Association and say whether it is disclosed by that map so far as you know that part of the road?

Mr. Compton: I will look at the map which is on exhibition here, but I will not admit that that was the map that was filed in a previous hearing. I don't know anything about it.

Mr. Kirby: I do not ask you to, Mr. Compton. I ask you to assume that that is the same map and to take my word for the fact, and, taking it, to make that comparison and see whether you

think that map clearly shows that part of the Manufacturers Railway which serves the Anheuser-Busch Brewing Association.

Mr. Compton: The Manufacturers Railway?

Mr. Kirby: Yes, sir.

Mr. Compton: Well, if I was to look at that map and at Compton's No. 1, I would say that they appear to be about the same so far as the territory is concerned between Lynch street on the north, Arsenal street on the south, Thirteenth street on the west
814 and the viaduct on the east.

Mr. Kirby: Now, will you kindly look further at that same map so far as it discloses the situation east of the viaduct, that is the river yard of the Manufacturers Railway Company and its connection with the Iron Mountain by them at the south and its connections with Wiggins on the north, and what have you to say?

Mr. Compton: As to the difference between the connections at those particular points?

Mr. Kirby: Yes, sir, at that particular point. Does that look to you as though the Manufacturers Railway river yard has grown some since that map on the wall was made?

Mr. Compton: I was just about to say the reverse, I count sixteen "Y's" on this map.

Mr. Kirby: And how many on the other?

Mr. Compton: Thirteen.

Mr. Kirby: Is there not a growth shown on your map too, at the south end of the yard in the lot of spurs at the south end of it that are not shown on the other?

Mr. Compton: Can you give me a description of what you mean by south of, Mr. Kirby.

Mr. Kirby: I mean the south end of the river yard, a lot of spurs that stick out toward the river shown on your map but not shown on the other.

Mr. Compton: South of Arsenal street?

Mr. Kirby: Yes, just south of Arsenal street.

Mr. Compton: Yes, there are fingers shown on the blue-print map, Compton's No. 1, that are not shown on the map filed by the Manufacturers Railway—was it?

Mr. Kirby: Yes, sir.

Mr. Compton: The map filed by the Manufacturers Railway Company.

Mr. Kirby: Now, will you be good enough to look at
815 your map and compare its showing with respect to the North Second street line of the Manufacturers Railway, from say Arsenal street up to the northern terminus of the line, and compare the two maps in that respect and say what difference, if any, you find by that inspection.

Mr. Compton: On Compton's Exhibit No. 1 the Park avenue yards are shown, the plant of Heibel & Sons is shown on Compton's and not shown on the Manufacturers Railway map; a connection with the St. Louis Lumber Company's track between Lami and Barton streets; two small spurs along south running parallel

with Second street between Lami and Barton streets and a track to Klauber's place on Second and Louisa, that is, if a pencil mark on here was intended to represent a track. I may have overlooked some of them, but that is approximately my observation just by carrying it in my mind.

Mr. Kirby: In other respects they are substantially the same?

Mr. Compton: I think so; yes, sir.

Mr. Kirby: Is it not a fact, also, Mr. Compton that from the comparison which you have just kindly made of the two maps, the result seems to be that general layout seems substantially the same, except for some additional improvements and extensions by way of spur tracks on the Manufacturers Railway Company.

Mr. Compton: I think so.

Mr. Kirby: As I understand your attitude and contentions as disclosed by your testimony, it is your view that there is no justification or excuse for the Manufacturers Railway Company as a terminal carrier in South St. Louis; is that correct?

Mr. Compton: Well, I don't like to answer that yes or no. I have said that I feel that the Manufacturers Railway ought
816 not to expect the Louisville and Nashville Railroad and other trunk lines to make any absorptions on business handled by that company.

Mr. Kirby: I didn't ask you that Mr. Compton; I asked you whether you have not testified on your direct examination that you saw no reasonable justification through the situation in this South St. Louis district for the existence of the Manufacturers Railway as a railroad?

Mr. Compton: Well, I cannot see, Mr. Kirby, why that line was built.

Mr. Kirby: Then your answer is yes, is it?

Mr. Compton: I think I have answered. I don't want to be abrupt in my answers. I don't want to say yes or no, nor do I want to make an unfair criticism, but I do say this in all fairness to you and to the company that I represent that there was no reason why it should be constructed and ask the Louisville and Nashville to make any of its absorptions.

Mr. Kirby: I didn't ask you about absorptions, Mr. Compton. My question is limited to your opinion which you have expressed on direct examination as to whether the situation in the South St. Louis shipping district, in your judgment, justified the existence of the Manufacturers Railway Company as a separate terminal carrier, and with all respect to you, I submit that you can answer that yes or no.

Mr. Compton: Well, since you have re-stated it, I think I can answer that. I don't see why it should have been constructed.

Mr. Kirby: You are aware, are you not, that the physical situation, the topographical situation of the Manufacturers Railway and its relative location and function, as compared with the Iron Mountain and Wiggins Ferry, to South St. Louis, were all in the
817 original record in this case and that the map you have just compared with your map were substantially disclosed to the

Commission when they decided this case. You were aware of that when you testified, were you not?

Mr. Compton: When I testified when?

Mr. Kirby: Today, here, in this case.

Mr. Compton: If you mean by that suggestion that the carriers made any testimony in the original case, I think you are in error.

Mr. Kirby: No, I didn't ask that, Mr. Compton.

Mr. Compton: The railroads did not make any testimony.

Mr. Kirby: You will pardon me, but I didn't ask you any question which called for or justified any answer on that subject-matter.

Mr. Compton: Well, I have certainly misunderstood you.

Mr. Kirby: Won't you be good enough to read the question. If I might suggest, I think we will make progress if you keep your eye on the question before you make your answer.

Mr. Compton: I am trying to keep my eye on the question and on the map at the same time.

(Question read by the reporter.)

Mr. Compton: Why, the testimony was only given by the Manufacturers Railway people according to my recollection and I would——

Mr. Kirby: Now, Mr. Compton——

Mr. Compton: And I cannot state to you affirmatively or negatively that the conditions were then stated as they are now or not.

Mr. Kirby: Have you read the opinion of the Commission in this case?

Mr. Compton: No, I haven't read it recently.

818 Mr. Kirby: You have read it though, have you not?

Mr. Compton: Yes, I have read it.

Mr. Kirby: Notwithstanding the fact that the Commission in that opinion say on page 309, "Due to these physical conditions it can hardly be held that a carrier whose rails are for the most part confined to the bank of the Mississippi River furnishes adequate terminal facilities for this important section of industrial St. Louis, and it seems therefore that the facilities furnished by the Manufacturers Railway are both reasonable and necessary," you are still contending, are you not, that the facilities to South St. Louis by the Manufacturers Railway are neither reasonable nor necessary?

Mr. Compton: The verbiage which you have just quoted is set forth on page 309, and it is an expression of views of a majority of the Commission based on the testimony that was before them at the time of the decision no doubt.

Mr. Kirby: And you are now trying to go over that same subject-matter and get them to change their view on that particular point in this case?

Mr. Compton: We are very desirous of having them do so; yes, sir.

Mr. Kirby: Just as you are also desirous of having them review and reconsider and redecide everything else that they have decided in this case, are you not?

Mr. Compton: Well, we are very anxious that the Interstate Commerce Commission review this entire case and reconsider.

Mr. Kirby: And reverse themselves——

Mr. Compton: And reverse themselves if that is fair to state.

Mr. Kirby: It is fair, that is what I want to know about.

819 Mr. Compton: And my recollection is that this was not unanimous, as I said a while ago; I have not read it recently, but my recollection is that the Commission in its opinion said that certain matters would be taken up.

Mr. Kirby: And the Louisville and Nashville, and you as a witness and one of its representatives, in defending this case have proceeded for the purpose of reopening, reconsidering and having redecided, not only the points which the Commission have left open for further consideration and decision, but also the points already decided?

Mr. Compton: Well, now, Mr. Kirby, you have got involved in that question many points of law. I will point one out to you and ask you whether you cannot redraw that question. What I have in mind is this: That the Commission did say in the report an opinion that the Manufacturers Railway was a common carrier. I have not made any testimony of that character here at all.

Mr. Kirby: Well, I will modify my question and eliminate that with pleasure, Mr. Compton, if that stands in the way of your answering my question.

Mr. Compton: I only mention that as one. There are a great many points. We believe that this question as to whether or not what we believe to be a plant facility is entitled to have a part of the rates of transportation, which I think means a revision.

Mr. Kirby: Well, am I not correct in understanding that your purpose is to have the Commission reconsider this entire case and to decide the subject-matter which they have already decided, as well as to decide the points which they left undetermined?

Mr. Compton: Well, let me make this answer like a man who don't know much of anything, as a generally plain fellow

820 should answer. We desire the Interstate Commerce Commission to decide that the Manufacturers Railway Company should not be made an allowance.

Mr. Kirby: Now, I call your attention to the language of the Commission in its opinion in this case, beginning at the bottom of 314 and at the top of 315, reading:

"On the whole record we are of the opinion and find that the action of defendants in canceling the divisions and absorptions which have been for many years included in the St. Louis rates has subjected complainant shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges, and to undue discrimination and disadvantage. This has been accomplished by canceling what were in effect joint rates or charges and leaving in effect what are found to be unjust, unreasonable and discriminatory charges."

Is it not a part of your purpose at this hearing to get the Commission to reconsider that subject-matter?

Mr. Compton: We would like to have that considered, yes.

Mr. Kirby: Mr. Compton, is not your map incorrect not only in respect to which you have voluntarily corrected it, and properly corrected it, as to the plants of the St. Louis Basket and Box Company and the St. Louis Cooperage Company, both of which are shippers in the middle zone, but is it not further incorrect in that your map shows a spur track in the yards of the St. Louis Lumber Company colored in green and belonging to the Iron Mountain instead of red and belonging to the Manufacturers Railway Company?

Mr. Compton: I say, Mr. Kirby, that this is correct as it stands.

821 Examiner Mackley: What do you mean by "this"—just designate it.

Mr. Compton: I say that the map showing the track between Barton on the south, Broadway on the west, Lami on the north and Second street on the east is properly colored and shown, so far as I am concerned, for this reason, Mr. Kirby: The track from the connecting point of the Manufacturers Railway and the Iron Mountain was in that plant before the Manufacturers Railway made its connection; that was an Iron Mountain track, or it was a track that the Iron Mountain connected with; whether they owned it or not, I don't know. The man who had the lumber yard there might have paid for it, I don't know anything about that, but it is fairly represented on the map, because it is a connection of the Iron Mountain and it is a connection of the Manufacturers Railway, but I can't tell you who the owner is.

Mr. Kirby: Your map purports to show conditions today, does it not?

Mr. Compton: Yes, and I show that from just east of Second street to a point say 300 feet west of Second street the track of the Iron Mountain is valueless because it is covered up; it is covered up inside of the property line, which means off of the street line, by lumber.

Mr. Kirby: And you don't say who covered it?

Mr. Compton: And by mud on Barton street.

Mr. Kirby: You don't say that the Manufacturers Railway covered up that track so as to bar out the Iron Mountain, do you?

Mr. Compton: I would not intimate such a thing.

Mr. Kirby: What is it covered with; lumber?

Mr. Compton: Day before yesterday when I was down
822 there it was covered with heavy yellow pine timbers.

Mr. Kirby: That is the same product that the St. Louis Lumber Company deals in?

Mr. Compton: I have no doubt it is their product; I have understood it belongs to them.

I do not know that Mr. Moore testified at this hearing that all of that track which I have just been talking about is exclusively operated by the Manufacturers Railway, and that the portion of it which runs out of the city block across Second street and down to a point of connection with the rails of the Iron Mountain running east and west on Barton street were sold by the Iron Mountain Railway to the

Manufacturers Railway, so that the whole spur now belongs to the Manufacturers Railway.

But assuming that Mr. Moore's statement is correct, that the Manufacturers Railway since my map has acquired this franchise to operate the spur track on the Iron Mountain track in Barton street into the lumber company's property crossing Second street, and also crossing Third street farther west between the two blocks occupied by the lumber company, I have no objection to making this track show in red as belonging to the Manufacturers Railway Company and as being operated by it and not by the Iron Mountain.

Mr. Kirby: The direct connection still exists, does it not, between the Iron Mountain track and the Barton street and this spur track which leads into the lumber yard?

Mr. Compton: Yes.

Mr. Kirby: Now will you look again, please, at your map, at the layout of the Wiggins Ferry, or St. Louis Transfer Railway, as shown by your map?

Mr. Compton: Do you mean on the ground?

823 Mr. Kirby: I ask you to just look at your map; is it not a fact that all of the Wiggins Ferry tracks extending from the north end of your map, where they begin to appear, down to the south end of the Wiggins tracks, which are shown, are all of them along the river front and to the east of the Iron Mountain tracks?

Mr. Compton: Yes, to the east of the Iron Mountain tracks and on what we call the levee.

Mr. Kirby: Is it not also a fact that the only private industries that the Wiggins Ferry Company has attempted to serve as shown by that layout is the factory or plant of the American Car and Foundry Company?

Mr. Compton: No, that is not correct.

Mr. Kirby: Well, one other—what is the other?

Mr. Compton: You asked for industries for private tracks, did you not?

Mr. Kirby: Yes, what does your map show?

Mr. Compton: I thought I had a quicker means of finding out; well, it shows first the Banner Buggy Company, location No. 15, between Rutger and Convent streets.

Mr. Kirby: That is east of the Iron Mountain, is it not?

Mr. Compton: It is between the Iron Mountain and the river.

Mr. Kirby: Is that a public track on a public wharf?

Mr. Compton: No, that is shown as an industrial track serving the Banner Buggy Company.

Mr. Kirby: Do you know whether it runs into the private property or whether the track is located, as your map seems to indicate, along the public wharf?

Mr. Compton: That track is west of the Wiggins Ferry line

824 and I don't know whether it is inside or outside of the property line of the Banner Buggy Company; I can't say.

Mr. Kirby: Your map does not indicate that it does run into the industry, does it?

Mr. Compton: It would appear not.

Mr. Kirby: Now, what other private industry is there served by the Wiggins Ferry by spur track into the industry? I am asking you.

Mr. Compton: I will have to give it to you as I did the other. The other is F. W. Geeke & Company, No. 81.

Mr. Kirby: That location is between Sidney and St. George streets and the river front?

Mr. Compton: Yes, between Sidney and St. George, and between the Iron Mountain tracks and the tracks of the Wiggins Ferry Company.

Mr. Kirby: And that apparently has a spur track into the industry?

Mr. Compton: Yes, sir.

Mr. Kirby: Now, do you find any other spurs except the plants of the American Car and Foundry Company?

Mr. Compton: Yes, sir.

Mr. Kirby: Well, what are they?

Mr. Compton: Lerler & Zam Mfg. Co., No. 73, lying at the foot of Victor street; likewise——

Mr. Kirby: Wait a minute—does your map show a track into the industry?

Mr. Compton: No, it does not; it doesn't show that the track is in there.

Mr. Kirby: That is a public track on a public street?

Mr. Compton: Mr. Kirby, I must confess that I have not got that in my mind sufficiently to tell you whether it is on a public street or not.

825 Mr. Kirby: We will move on then to the next that you can give us some information about.

Mr. Compton: No. 83; Neilsen, Klein & Krausse Mfg. Co., 82 is on——

Mr. Kirby: That is between Sidney and Victor street on the river front?

Mr. Compton: Between Sidney and Victor street and between the Iron Mountain on the west and the Wiggins Ferry on the east.

Mr. Kirby: Your map does not show that that track runs into an industry there, does it?

Mr. Compton: No, it shows it runs parallel right to the property line.

Mr. Kirby: That track is really just a spur track running parallel to the Wiggins' own line there?

Mr. Compton: Well, it shows to my mind this, Mr. Kirby, that that industry, 82, which I have just described is circumstanced like 24 on the Manufacturers Railway at Barry street and Second, where the track is right along on the sidewalk line.

Mr. Kirby: Yes.

Mr. Compton: On which is shown to be a private industry.

Mr. Kirby: The private industry is next to the track, but the track is in the public street.

Mr. Compton: It is along Barry street; I walked along there the

other day and there is about space enough for a man to stand between the side of the car and the brick wall.

Mr. Kirby: Did you find any other industries served direct by the Wiggins through spurs into the plant?

Mr. Compton: Well, I will give them to you just as they come; that is, all that I find in what we call the industrial list.

Mr. Kirby: How long has the Wiggins been located in
826 South St. Louis with its lines running along the river?

Mr. Compton: Many years; I don't know how many.

Mr. Kirby: There was no physical reason at any time during that long period of time why the Wiggins Ferry Company might not have built a viaduct across the Iron Mountain and reached all of the territory west of the Iron Mountain main line, is there?

Mr. Compton: Well, I don't know.

Mr. Kirby: Well, is there, so far as you know that territory physically?

Mr. Compton: Well, I don't know enough about engineering to give you an idea of what I would do in a situation of that kind. It might have been better to have constructed a viaduct with an approach from somewhere in the vicinity of Chouteau avenue; I don't know whether it is possible to get a viaduct across there or not.

Mr. Kirby: You do know that the Manufacturers Railway built a viaduct?

Mr. Compton: Yes.

Mr. Kirby: In a much more difficult place than any part of that northern end of the Wiggins Ferry line would have to cross, would it not?

Mr. Compton: I don't know as to the cost, Mr. Kirby; I couldn't say, but I am willing to say this, as far as the viaduct is concerned in the vicinity of Dorcas street, it is a very substantial structure.

Mr. Kirby: During all the years the Wiggins Ferry Company has had its lines of railway along the river front and through the opportunity afforded it by the industries of South St. Louis, when it developed only the few industrial switches that you have described, is it not a fact that the industrial territory in South St. Louis
827 was open to it, and that it did not take advantage of it by entering?

Mr. Compton: I don't think I can answer that question; I don't know.

Mr. Kirby: Then answer this question: Do you consider that the Wiggins Ferry Company adequately serves the industrial district of South St. Louis?

Mr. Compton: Well, I said this, Mr. Kirby, if you will pardon me—when I said that South St. Louis was served by the Wiggins Ferry and the Iron Mountain road, which afforded better facilities and adequate facilities for the conduct of the business in that section, I didn't separate, but I used them both, and I think if you look at the map and study it that you will reach the conclusion by taking the facilities generally in South St. Louis furnished by the Iron Mountain road and by the Wiggins Ferry, it is simply beyond com-

parison, so far as the Manufacturers Railway is concerned; they are not comparable at all.

Mr. Kirby: Now, Mr. Examiner, I submit the witness has not answered my question. I am entitled to an answer to it. I will ask that the stenographer may read it and I ask Mr. Compton to answer the questions that I asked him.

(Question read by the reporter.)

Mr. Compton: Well——

Mr. Kirby: Can't you answer that yes or no, Mr. Compton; you may make any explanation you want afterward.

Mr. Compton: I would say as far as team track deliveries are concerned, yes—now as far as private industry tracks are concerned, it don't serve as many as the other roads.

828 Mr. Kirby: What team tracks has the Wiggins Ferry which it affords to the shipping public at South St. Louis?

Mr. Compton: I understand they place cars on the Wiggins Ferry track all the way along, along the Eads bridge, all the way down to Dorcas street, any place, all along between the Eads bridge and Dorcas street.

Mr. Kirby: Do you regard that as an adequate shipping facility for South St. Louis?

Mr. Compton: I think that is pretty good; there is a big district down there; no doubt about that, but——

Mr. Kirby: Do you regard it as adequate?

Mr. Colston: He said "but."

Mr. Kirby: I beg pardon, I did not mean to interrupt him.

Mr. Compton: I do not mean to say as far as the private industries are concerned it is ample, because it only reaches the few that I have enumerated.

Mr. Kirby: And also between the line of the Wiggins Ferry Company and the shipping public of South St. Louis there runs the Iron Mountain road; is not that an obstacle, too, which stands in the way, with its assembly yards and distribution yards?

Mr. Compton: Well, I should think, Mr. Kirby, it would be a right difficult matter for the Wiggins Ferry or St. Louis Transfer Railway to get over beyond in the direction of the west of the Iron Mountain road.

Mr. Kirby: I did not ask you that, Mr. Compton; I asked whether it would not be difficult for shippers to haul over the tracks of the Iron Mountain to reach the Wiggins track which you say afford an adequate team track for the shipping public in South St. Louis?

Mr. Compton: I misunderstood you question, Mr. Kirby. At the intersections of the streets of the Iron Mountain road there are several tracks in those streets, but, however, they are very good

829 crossings, and I took particular notice of that fact when I went over this territory.

Mr. Kirby: You think that is no obstacle to the shipping public?

Mr. Compton: Why, I don't think it is an obstacle that you don't

meet all over the country in undertaking to handle business to and from railroad yards.

Mr. Kirby: And how do you account for the fact, then, that the Wiggins Ferry Company never developed any west of the Iron Mountain road, which is also along the river front?

Mr. Compton: West of the Iron Mountain?

Mr. Kirby: Yes.

Mr. Compton: I don't know why they didn't go over there

Mr. Kirby: Apparently they rejected a huge opportunity in failing to get across.

Mr. Compton: I don't know; you are trying to develop that huge opportunity and whether they overlooked it or not I couldn't say.

Mr. Kirby: But you can say, so far as the situation exists today, they did not extend and never extended west of the Iron Mountain?

Mr. Compton: The map shows they did not cross west of the Iron Mountain road.

Mr. Kirby: That is all I asked you. So, in answer to my question now, will you again look at your map and state whether or not it is not a fact that the greater part of the industrial switches which the Iron Mountain has extended to industries from its rails lie north of Barton street?

* * * * * * *

Mr. Compton: Well, I would say that using Barton street as the line, eliminating the Barton street line, there appears to be more industries north of that line than south of it. Now
830 as to the importance of those industries I can't say.

Mr. Kirby: I didn't ask you as to that, but is not there a very greater preponderance of spur tracks of the Iron Mountain lying north of Barton street than south?

Mr. Compton: I would say there were more north instead of south; yes.

Mr. Kirby: Did you in going over that property observe, in that same connection, that the grades begin at about Barton street and from that point south the grades begin to get heavy going west from the river?

Mr. Compton: My recollection is that the ascending grade is slight at, I think it is Sidney street. I may be in error about that; maybe it is Victor street; it is one or the other.

Mr. Kirby: Well, anyway, it is quite close to Barton street; it is right in that neighborhood, is it not?

Mr. Compton: Barton street?

Mr. Kirby: Isn't it about Barton street where the grades begin?

Mr. Compton: The grades begin where—in what direction?

Mr. Kirby: I mean where the bluff begins to rise westwardly from the river—that you begin to strike it about Barton street?

Mr. Compton: There isn't any bluff down there.

Mr. Kirby: Well, going south on Broadway, is not Barton the place where you notice that you begin to climb the hill?

Mr. Compton: Do you mean on Broadway?

Mr. Kirby: Take on Broadway where you are most familiar with.

Mr. Compton: Taking the street car line on Broadway, may I use that?

831 Mr. Kirby: Yes.

Mr. Compton: Going south, my recollection is that the ascending grade very slightly begins about Victor street, and Victor street at that point is probably 300 feet.

Mr. Kirby: One block?

Mr. Compton: Three or four hundred feet.

Mr. Kirby: One block south of Barton?

Mr. Compton: Yes.

Mr. Kirby: Let us take Victor street, then; is it not a fact that all of the territory west of the Iron Mountain, east of Broadway and north of Victor street, constitutes the terriory in which you see the bulk of the industrial or spur track development leading off of the Iron Mountain?

Mr. Compton: Yes.

Mr. Kirby: And is it not also——

Mr. Compton: Wait a minute, I didn't finish. You refer now to the spur track development of the Iron Mountain to reach——

Mr. Kirby: Reach industries or serve the public.

Mr. Compton: That is another proposition, you have added something to your question.

Mr. Kirby: Well, answer it with the added element in there.

Mr. Compton: I would say no.

Mr. Kirby: Then answer it with the private industry line in it.

Mr. Compton: I would say yes.

Mr. Kirby: Then it is a fact that the Iron Mountain has reached out its branches to help the industrial development of South St. Louis only where it had no difficulties to contend with in the way of grades, is it not?

Mr. Compton: No, I won't say that.

832 Mr. Kirby: Will you point to a single industry from which there was any grade to contend with for the Iron Mountain to reach it?

Mr. Compton: Do you mean did the Iron Mountain have to use an ascending grade to reach an industry?

Mr. Kirby: Won't you read the question?

Mr. Compton: There does not seem to be any grades at all at the industries where the Iron Mountain have tracks.

Mr. Kirby: Is it not a fact that south of Victor street the principal development of the Iron Mountain as shown on your map is its own main line tracks with an occasional short spur track leading off into the immediate adjoining industry?

Mr. Compton: South of Victor?

Mr. Kirby: Yes, that is your dividing line of where the grade begins, that is why I took it.

Mr. Compton: Well, there are probably half a dozen industries served by a track between Victor and St. George.

Mr. Kirby: And those are short spur tracks running off immediately from the Iron Mountain Line right into the adjoining industry?

Mr. Compton: Yes. Now between St. George street and Dorcas, the tracks running along the fence, the fences of the American Car and Foundry Company——

Mr. Kirby: With spurs into that plant?

Mr. Compton: And the leads into that plant on the west are at the south end?

Mr. Kirby: No, it is both east and west, the Iron Mountain runs right through it.

Mr. Compton: I think you are slightly in error, Mr. Kirby.

Mr. Kirby: You are testifying.

Mr. Compton: What I meant was that the lead into the American Car & Foundry Company plant west of the Iron Mountain road is from the south, just below the Busch Glass Works. The lead into the American Car & Foundry Company plant east of the main line of the Iron Mountain Railroad is from the north and south.

Mr. Kirby: Now, is not this substantially true, Mr. Compton, that your map shows that the Iron Mountain road through the decades of its existence in South St. Louis entirely neglected that part of the South St. Louis industrial district which lay south of Victor street and west of its own main line?

Mr. Compton: Why, no; it served everything that it was possible for it to serve; it served Anheuser-Busch, one of the biggest concerns in St. Louis.

Mr. Kirby: I am talking about the spur tracks constructed by the Iron Mountain to develop and encourage industries in South St. Louis. Now, is not that true?

Mr. Compton: That is a question that would be right hard for me to answer as to whether or not the Iron Mountain responded in all cases to requests.

Mr. Kirby: Won't you read the question.

(Question read by the reporter.)

Mr. Compton: I won't say that, Mr. Kirby. I won't say it would be fair for me to say that the Iron Mountain Railroad neglected its business.

Mr. Kirby: Does your map show a single spur track more than half a block long constructed from the lines of the Iron Mountain road south of Victor street and reaching into the industrial district west of the Iron Mountain road south of Victor street, except the extensive spur tracks which run into the plant of the American Car and Foundry Company——

Mr. Compton: Between Utah and Cherokee streets?

Mr. Kirby: Between Utah and Cherokee streets.

833 Mr. Compton: The map shows that at the foot of Arsenal street the Iron Mountain Railroad had tracks into the in-

dustries of the St. Louis Basket Company and the St. Louis Cooperage Company.

Mr. Kirby: That is, one track more than half a block long, was there not, in there?

Mr. Compton: Wait a minute. The map shows that the United States Arsenal covers probably as much as four blocks just south of that. Of course, we all know that the Arsenal is not a shipper. The Iron Mountain has a track just outside of that fence, but it appears to have been disposed of and that the Manufacturers Railway has gotten——

Mr. Kirby: You don't know that, Mr. Compton, do you?

Mr. Compton: I said it appears, I didn't say it was. I am talking about it from the map. I know that, that the Arsenal has been there for a great many years, and I know that the Iron Mountain runs alongside of it; I have seen it.

Mr. Kirby: But you don't know that the Iron Mountain ever had spur tracks into the Arsenal?

Mr. Compton: I don't think they did; I think the Manufacturers Railway put it in. The only one they ever had.

Mr. Kirby: Then why do you intimate there was a dispossession by the Manufacturers Railway of somebody else's track?

Mr. Compton: I meant just outside of the fence. I say, I think those are your tracks.

Mr. Kirby: If you can show any other spur track industrial development in that part of South St. Louis by the Iron Mountain I would like to know it.

Mr. Compton: Here is an industry, a very large one
835 the paint shop of the American Car & Foundry Company.

Mr. Kirby: I excepted that from my question.

Mr. Compton: Suppose we retrace our steps a little bit and come back here to St. George. From St. George to Dorcas street I would say that is probably 1,500 feet—I don't know, that is a guess—on both sides you have already got a plant, a large plant and fully developed. Now, the next place is the Anheuser-Busch. The Anheuser-Busch saw fit to construct its own tracks. Of course that ended that *proportion*. Now, when you get down to the next plant the Iron Mountain Railroad Company built a track into the Cooperage Company and the Basket Company.

Mr. Kirby: But the Iron Mountain had a chance to build——

Mr. Colston: Mr. Kirby, let him finish.

Mr. Kirby: Hadn't he finished. Excuse me.

Mr. Compton: Now, when you come down to the next street, Utah street, the car company owns the tracks within its own premises in that part of the plant, just the same as it does in those parts of its plant lying between St. George and Dorcas street.

Mr. Kirby: You have been sticking very close to First street, along which the Iron Mountain line runs. Have you detected any industrial track development of the Iron Mountain as far west as Second street and south of Victor.

Mr. Compton: Why, so far as that section is concerned south of

Utah street to Potomac, I think it is commons, and why people don't buy the ground and build on it I don't know.

Mr. Kirby: Now, Mr. Compton, do you mean to say for this record that it is commons south of Victor street, along the main line of the Iron Mountain road?

836 Mr. Compton: Do you mean on the west?

Mr. Kirby: West of the main line of the Iron Mountain road south of Victor street.

Mr. Compton: Why, there is nothing in there according to my recollection.

Mr. Kirby: Isn't it a fact that there is a steep bluff in there and that the Western Cable Railway climbs a very steep hill?

Mr. Compton: No; I said this, I said between Cherokee and Potomac. Now, when you get to the foot of Zepp street and the foot of Potomac street, the outturn or the interchange yards between the Potomac street track and the Iron Mountain is shown.

Mr. Kirby: You are an old enough man in the railroad world to know that the Iron Mountain was running along the river from long before the Manufacturers Railway's first rail was laid—don't you know that?

Mr. Compton: The Iron Mountain & Southern road was in operation through to Columbus in 1858.

Examiner Mackey: Through to Columbus, Georgia?

Mr. Compton: Columbus, Kentucky. In fact, the first outlet St. Louis had to the southeastern territory was the old Iron Mountain Railway. I think perhaps it is the first outlet St. Louis had down to the State of Arkansas.

Mr. Kirby: How long was it here? I don't care how long it was in Arkansas. How long do you think it was located on this river front?

Mr. Compton: I don't know how old the Anheuser-Busch interests are, but I can state this, that the Iron Mountain has had its tracks in there many years, probably 40 years.

Mr. Kirby: Before the Manufacturers Railway was started?

837 Mr. Compton: I don't know when the Manufacturers Railway was started; I think it was in 1887; I am not sure.

Mr. Kirby: Assuming it to have been 1887, many years before that the Iron Mountain was there?

Mr. Compton: Oh, yes.

Mr. Kirby: And there was no physical reason why the Iron Mountain should not have extended its tracks westwardly just where the Manufacturers Railway tracks are now built?

Mr. Compton: I don't know what opportunity or industry the Iron Mountain had. Whether they had any I couldn't say.

Mr. Kirby: But the ground and the hills were there, were they not?

Mr. Compton: Yes, sir.

Mr. Kirby: And the brewery was there, was it not, when the Manufacturers Railway was first built and when the opportunity was open to competing lines of railway to build west and get that territory? The Anheuser-Busch Brewery was there, was it not?

Mr. Compton: I am satisfied that the Anheuser-Busch Brewery or Brewing Association or the Anheuser-Busch Company and the Iron Mountain Railway both antedated the Manufacturers Railway.

Mr. Kirby: And the Louis Obert Brewery was there, was it not?

Mr. Compton: I don't know; I couldn't say.

Mr. Kirby: But you do know there were a number of breweries lying in that part of St. Louis and a number of other industries lying west of Second street, which had shipping to do—you know that, don't you?

Mr. Compton: No; I do not.

Mr. Kirby: You have compared in one of your answers on
838 direct examination the status of the Manufacturers Railway Company in comparison with the St. Louis Transfer Railway Company, and you mentioned the fact that you thought the Manufacturers Railway Company ought not to be considered as a terminal carrier because it had no station or passenger business. Does the St. Louis Transfer Railway have them?

Mr. Compton: The St. Louis Transfer Railway is a part and parcel of the St. Louis Terminal Association and that company does have depots for the receipt of shipments.

Mr. Kirby: I did not ask you that. The St. Louis Transfer Railway as a corporation operating as a carrier, does it not get divisions and allowances out of the St. Louis rate from your line?

Mr. Compton: There is no less than carload point of receipt for property on the St. Louis Transfer Railroad track in that part that I have described——

Mr. Kirby: I didn't ask you that.

Mr. Colston: Let him finish.

Mr. Compton: No, so far as the less than carload business is concerned, or the business which is obsorbed, if the movement is by the Wiggins Ferry division of the Terminal Association then its charges are absorbed; if the movement between St. Louis and East St. Louis is by the Eads Bridge, then the component parts of those companies are absorbed; if it moves by the Merchants Bridge and Terminal through the north bridge, why, then the separate parts of that working arrangement are absorbed.

Mr. Kirby: Does the St. Louis Transfer Railway handle any less than carload business?

Mr. Compton: I think it does.

Mr. Kirby: Does it have a station house?

Mr. Compton: I answered a while ago that there was
839 no station house on it between—I don't know of any station; I don't think there is any, Mr. Kirby, on that particular part of the line between Eads Bridge and Dorcas street.

Mr. Kirby: Does it do any passenger business?

Mr. Compton: I think over part of it, yes; I won't be positive, but I think yes.

I treated and considered the Busch Glass Works, the Dried Brewers Grain Company, the St. Louis Refrigerator Car Company

and the Manufacturers Railway Company as industries affiliated with the Anheuser-Busch Brewing Association.

I do not remember that this record shows that the Anheuser-Busch Brewing Association and the Busch-s together own less than fifty per cent of the stock of the St. Louis Refrigerator Car Company. But assuming that to be a fact, I would say that substantially a forty per cent interest would not place the Anheuser-Busch Brewing Association in control of that industry, that is, it might not by actual percentage, but it might absolutely control it nevertheless. In speaking of control, my conclusion was this—that it was affiliated, that is, that the owners of the Anheuser-Busch Brewing Association and the other affiliated concerns are owners of the St. Louis Refrigerator Car Company.

I would not consider an ownership of forty per cent as a stock controlling interest of the Refrigerator Car Company. I would say that if a concern had any proportion of stock in another concern it would be an affiliated concern.

Assuming that Adolphus Busch owns 5,000 shares of the Frisco Railroad, I would not call the Frisco Railroad an affiliated concern with the Anheuser-Busch Brewing Association.

Assuming that Adolphus Busch owned 5,000 shares of
840 the Iron Mountain, I would not call the Iron Mountain an affiliated concern of the Anheuser-Busch Brewing Association.

Mr. Kirby: Yet I understand you to say that the proportion of interest makes no difference in your classifying it as an affiliated concern?

Mr. Compton: I speak of this concern being affiliated because it is directly connected with the transportation and marketing of those products of the Anheuser-Busch Brewing Association.

Mr. Kirby: And so is the Iron Mountain directly connected with it in that it is one of the carriers doing a great deal of carrying of its goods to market.

Mr. Compton: Yes, so is the Louisville and Nashville.

Mr. Kirby: Suppose Adolphus Busch owned 40 per cent of the American Refrigerator Transit Company and the Transit Company cars were used in the service of the Anheuser-Busch Brewing Association, would you call that an affiliated *o*ncern?

Mr. Compton: I would say in that case that there were some affiliation if it performed service of the same character as the St. Louis Refrigerator Car Company performed. It seems to me that there is a community of interest there.

Throughout my testimony I have assumed that the Manufacturers Railway is controlled by the same interests that control the Anheuser-Busch Brewing Association, and I have treated it in my testimony and in my conclusions as an affiliated concern with the Anheuser-Busch Brewing Association; that is, I have treated it in this way: That what redounds to the benefit of the Manufacturers Railway finally finds its way into the coffers of the Anheuser-Busch Brewing Association or the people who own it.

841 I eliminate the Anheuser-Busch Brewing Association itself as a corporation as being a stockholder in the Manufacturers Railway. I do not claim that the Brewing Association as a corporation has any interest in the Manufacturers Railway, but I understand that the Anheauser-Busch Brewing Association is not a stockholder in the Manufacturers Railway as a corporation, but the people who are in control of the Anheuser-Busch Brewing Association are the stockholders of the Manufacturers Railway.

Mr. Kirby: Then do you not also understand that any benefits that may flow from the operation of the Manufacturers Railway Company as a business enterprise will go not into the Anheuser-Busch Brewing Association, as a corporation, but to the stockholders of the Manufacturers Railway Company?

Mr. Compton: Probably in name. The benefits would not go to the Anheuser-Busch Brewing Association, but in fact I think they do.

Mr. Kirby: You think that the individuals who are stockholders in the Manufacturers Railway and also stockholders in the Anheuser-Busch Brewing Association will turn over then to the Anheuser-Busch Brewing Association the dividends that they may receive from the Manufacturers Railway?

Mr. Compton: There is a community of interest there, Mr. Kirby, that I cannot in my mind separate. I think that the community of interest in that——

Mr. Kirby: I did not ask you that, Mr. Compton, won't you please answer the question that I did ask?

Mr. Compton: I repeat that in my opinion whatever benefits in the way of profit from the Manufacturers Railway redounds to the benefit of the Anheuser-Busch Brewing Association and its stockholders.

842 Mr. Kirby: And I ask you how can it redound to the benefit of the Anheuser-Busch Brewing Association as a corporation, except through a transfer to that association of such dividends as the stockholders in common of the Manufacturers Railway and the brewery may turn over to the brewery?

Mr. Compton: Of course I do not know that the dividends paid to the actual individuals are turned over, but the community of interest is so close that it seems to me that that is the natural consequence.

Mr. Kirby: You think then that if you were a stockholder in the Manufacturers Railway, and also a stockholder in the brewery, and you got a dividend on your railway stock, you would turn that dividend over to the Brewing Association, do you?

Mr. Compton: No, I don't know that I would.

Mr. Kirby: Then are you suggesting or intimating that the Busch-s, as stockholders in the Manufacturers Railway Company, do that, or have done that, with dividends that they may have received from the Manufacturers Railway Company?

Mr. Compton: I have not made any such intimation.

Mr. Kirby: Then where, I ask you, is there any identity of

benefit between the brewery and the Manufacturers Railway Company?

Mr. Compton: Well, it seems to me that the relationship is so close in there that what redounds to one redounds to the other for the benefit of each. Because it is called the Manufacturers Railway, or because the stock may be held in the name of somebody else and not in the name of the association, does, not, it seems to me, disassociate the Anheuser-Busch Brewing Association and the Manufacturers Railway Company.

Mr. Kirby: I ask you again to tell me how the corporation, the Anheuser-Busch Brewing Association, benefits through profits that the Manufacturers Railway Company makes on its financial or business operations?

843 Mr. Compton: If both of those companies pay dividends and there is a profit in them, of course the individuals will get the dividends. Now as to what disposition they made of that money derived from the dividends I do not know.

Mr. Kirby: When Mr. Adolphus Busch as a stockholder of the Manufacturers Railway Company gets no more from the investment in that enterprise than a reasonable return on the investment, do you think he will have any more than what is properly coming to him from that investment in a railroad enterprise?

Mr. Compton: Well, I think this: That this is a plant facility; that its primary object is for the benefit of the Anheuser-Busch Brewing Association in cheapening its product of manufacture in deliveries to the transportation company for market.

Mr. Kirby: Mr. Compton, suppose between tonight and tomorrow morning the ownership of the Manufacturers Railway Company should pass from that corporation to the St. Louis Iron Mountain and Southern, and from tomorrow on the character of the service rendered over what is now the rails of the Manufacturers Railway Company go on as before, would that alter, in your opinion, the character of that service?

Mr. Compton: I think in that event, Mr. Kirby, that the divorcement between the manufacturing company and the carrier has been accomplished.

Mr. Kirby: You think then it would be lawful and proper and not a rebate, do you, for the Louisivlle and Nashville to pay to the Iron Mountain an allowance for the same that you say now is unlawful for the Louisville and Nashville to pay the Manufacturers Railway?

Mr. Compton: Yes, sir.

844 Mr. Kirby: Without any change in the character of the service rendered?

Mr. Compton: Yes, sir.

Mr. Kirby: Then is it not a fact that in your mind and in your conclusions stated here today the only elements of difference consist in the fact of a common stock ownership as between the Manufacturers Railway Company and the Anheuser-Busch Brewing Association?

Mr. Compton: Well, the owners of the Anheuser-Busch Brewing

Association, or the stockholders in the Anheuser-Busch Brewing Association, and the owners and the stockholders of the Manufacturers Railway are the same persons, and I think we must necessarily, to prevent discrimination, divorce the manufacturing plant from the transportation plant and the transportation from the manufacturing plant, not only so far as Anheuser-Busch is concerned, but so far as others are concerned engaged in the manufacture or the marketing of a product to the destinations.

Mr. Kirby: Now, won't you be good enough to answer my question? Will you read it to him?

Mr. Compton: I think I did.

(Question read by the reporter.)

Mr. Compton: That is what it is called. It is called a railroad. It is owned by the same people, according to my understanding, that own the Anheuser-Busch. I might repeat that I hold to the opinion that they should be entirely divorced. Now what that process of divorcement should be, I do not believe that I can state. I am not a lawyer. The lawyers will have to determine that thing, or the Interstate Commerce Commission, or those who are competent, but I cannot, in my mind, form a plan by which a divorcement or an entire separation may be made, but it is perfectly clear to my
845 mind that such a divorcement should occur. Now, as far as the process is concerned, I do not pretend to be competent to state.

Mr. Kirby: Are you willing to answer the question that I asked you, Mr. Compton?

Mr. Compton: I am not unwilling to answer any question, Mr. Kirby.

Mr. Kirby: Won't you be good enough to listen while the reporter reads it to you a second time, and answer it please?

Mr. Compton: I will if I can, certainly.

(Question reread by the reporter.)

Mr. Compton: Yes, so far as outward appearances go.

Mr. Kirby: Now, do you mean by that that there is something under the surface? Do you mean the Commission to think that you have some information about something that ought not to be?

Mr. Compton: No, far from it.

* * * * * * *

Mr. Kirby: Then you will be good enough to point out for the benefit of the Commission any respect in which the character of the service rendered by the Manufacturers Railway Company in the service of the Anheuser-Busch Brewing Association in interstate traffic differs in any respect from the service which is rendered by the Iron Mountain or Missouri Pacific road in the service of the Laclede-Christy Fire Clay Company at its plant in St. Louis?

Mr. Compton: The character of service rendered by the Iron Mountain road is different from the character of service rendered by the Manufacturers Railway to the Anheuser-Busch Brewing Associa-

tion. The St. Louis, Iron Mountain and Southern is engaged in the conduct of a transportation business. In that respect there is no affiliation or joint ownership of any character in connection
846 with an industrial concern, whereas in the latter there is, and that is the difference in my opinion.

Mr. Kirby: Is that the only difference you can see and point the Commission to?

Mr. Compton: That is the only difference that occurs to me at this moment.

Mr. Kirby: What is the difference in the character of the service rendered, as between a carload of beer shipped by the Louis Obert Brewing Company, loaded in the Ninth street yard or the Eleventh street yard of the Manufacturers Railway Company, moving out over the lines of the Manufacturers Railway Company to connection with the Wiggins Ferry Company, and handled by the Wiggins Ferry Company to the Louisville & Nashville for delivery at some point on your line—and a carload of beer handled for the Anheuser-Busch Brewing Association by the Manufacturers Railway moving along the same route and destined to the same point on your line?

Mr Compton: The difference is this: In the case of the former, by which I mean the shipment by the Louisville Bridge Company, the redound to the benefit of the Anheuser-Busch Brewing Association would be the difference—cut the redound out. The Anheuser-Busch Brewing Association and the Obert shipment would benefit to the extent of the shipment——

Examiner Mackley: May I suggest one thing, Mr. Kirby?

Mr. Kirby: Yes, sir.

Examiner Mackley: Is not this what you mean—the Obert is right here (indicating)?

Mr. Kirby: Let him ship from the same track, if you please.

Examiner Mackley: Suppose you give a car to the Obert
847 Brewing Company up here, and give a car to the Anheuser-Busch Brewing Association there, that is the Thirteenth street yard?

Mr. Kirby: Yes. Let them be loaded right side by side, if you please.

Examiner Mackley: And put in the same train?

Mr. Kirby: Yes; and moved out in the same train.

Examiner Mackley: And moved out in the same train to the same point of interchange?

Mr. Kirby: And the same destination.

Examiner Mackley: The physical operation would be the same?

Mr. Kirby: That is what I want to know. Is there any difference in the character of the service rendered? That is my question.

Mr. Compton: I think I understand your question, and I want to give you an answer. May I ask if you refer to the character of service as representing nothing more or less than the physical movement of the property?

Mr. Kirby: Yes, I refer to the character of the service as evi-

denced by its physical movement and as showing its relation to the act of transportation.

Examiner Mackley: You can use such terms as you want in answering, Mr. Compton.

Mr. Kirby: Certainly.

Mr. Compton: The Anheuser-Busch Brewing Association would obtain a profit on the business of an independent and be equivalent to a rebate.

Mr. Kirby: How would the Anheuser-Busch Brewing Association obtain a profit on that movement for the Obert Company?

Mr. Compton: Because if it made a profit it would redound to the benefit of the Anheuser-Busch Brewing Association.

848 Mr. Kirby: How?

Mr. Compton: Through affiliation.

Mr. Kirby: You mean through the common o..nership of stock; is that it?

Mr. Compton: Just as I said before; I can't disassociate that in my mind.

Mr. Kirby: Is that the only difference that you see between the character of those two movements?

Mr. Compton: That is the difference in that respect that I see.

Mr. Kirby: Can you see any other?

Mr. Compton: Well, I can't recall any other to mind right now. I know it to be a fact that the Anheuser-Busch Brewing Association ships a great deal of keg beer from its Second street yard, which I have referred to as at Brodaway and Arsenal, and that they also ship a great many carloads of mixed keg and bottled beer.

I also think that in the shipping from that yard the Anheuser-Busch do a great deal of teaming in order to get their goods to that yard and into the cars. I regard that teaming as plant facility performed by it.

Assuming that the Louis Obert Company loads its car of keg beer at the Twelfth street track of the Manufacturers Railway, which is almost next door to the Obert Brewing Company, and comparing the amount of its teaming with the teaming done by the Anheuser-Busch Brewing Association in loading its cars in the Second street yard, I would say that the Manufacturers Railway, which is a creature of the Anheuser-Busch Brewing Association, would profit on the business of an independent shipper and that would be the equivalent of a rebate. I think there would be very little difference in the cost of hauling. I do not know as there would be any differ-

849 ence—there might possibly be. After you once have loaded the wagon, the difference in the cost of a short haul would not be very appreciable.

The distance as a bird flies is almost as great from the Obert Brewing Company to the Second street yard of the Manufacturers Railway Company as it would be from Broadway to the tracks of the Iron Mountain on Barton street. I think it necessarily would cost the Anheuser-Busch Brewing Association something to dray their beer to the Second street yard of the Manufacturers Railway. I do not

know whether it would cost the Anheuser-Busch Brewing Association more than it would cost the American Brewing Company to team from its plant across Broadway and Pestalozzi street to the Broadway public delivery yard. However, the map shows that the distance haul by the American Brewing Company would be less than the distance haul by the Anheuser-Busch Brewing Association.

I feel that the Manufacturers Railway Company is a plant facility and not a common carrier. As to our Mr. Smith's opinion about it, I think he expressed himself at the previous hearing. I am the responsible official of the Louisville & Nashville that made the traffic arrangements with the Manufacturers Railway which allowed the absorption of the charges of the Manufacturers Railway. This is true not only of the allowances prior to 1910, but as to the allowances since the decision of the Commission in June, 1911.

Mr. Kirby: Now, did I understand you correctly to say that you gave those instructions and authorized your road to grant those allowances, believing that that was the granting of an unlawful rebate?

Mr. Compton: Do you desire me to confess that in the face
850 of a knowledge of that kind that I deliberately violated the law?

Mr. Kirby: No more than you have done in your direct testimony, if that is what your direct testimony meant. I only want to understand what you meant then. I would not touch on the subject except that you yourself developed it.

Mr. Compton: We met the conditions, Mr. Kirby, that were imposed. I believe, and I have right along, that it is improper, and inasmuch as this is a plant facility, in my opinion I believe it is a rebate, and I have not changed my view about that subject since 1911, or my belief prior to that time.

During the months of September, October and November, 1911, according to a hurried count, we received from the Anheuser-Busch Brewing Association approximately 68 cars. I think that is a very nice business.

I remember the illustration of ten cars of beer moving to Memphis from the Anheuser-Busch Brewing Association used by our president, Mr. Smith, at the previous hearing, and I certainly agree with him that that business was not remunerative.

I have never consciously carried some business at a low rate or at a loss in the hope of thereby making a generally better showing, either through volume or added business that I might secure from that source. I have never carried business at a loss except as a matter of charity.

We carry grain from East St. Louis to Louisville at 6c. That is a very low rate and is too low, but it is the tariff rate. We participate in the handling of this grain. We are not very glad to get it, but we take it because that is a going rate. We do not refuse to handle it and do not discourage its coming to our line.

851 I think that all of the service rendered by the Manufacturers Railway to the Anheuser-Busch Brewing Association is a switching service, pure and simple. The act of transportation on a shipment of beer from the Anheuser-Busch Brewing Association

to Nashville, Tenn., for instance, begins at the tracks of the Wiggins Ferry Company, shown on this map in yellow at "B." The act of transportation in respect of a shipment of lumber originating with the Fidel-Ganahl Lumber Company on the Second street line of the Manufacturers Railway and moving out over the Wiggins Ferry to the Louisville & Nashville to any point on its line begins at the tracks of the Wiggins Ferry, shown in yellow at "B," and the act of transportation in respect of a shipment made by the Schroeter Coal Company from its yard on Dorcas street east of Broadway, moving out over the Manufacturers Railway to its connection with the Wiggins Ferry and by the Wiggins Ferry delivered to the Louisville & Nashville, begins upon delivery to the Wiggins Ferry.

Reversing the movements in those same illustrations, the act of transportation ends, in respect of an interstate shipment originating on the lines of the Louisville & Nashville and destined to the Anheuser-Busch Brewing Association delivered over the Wiggins Ferry and the Manufacturers Railway to the Thirteenth street yard of the Manufacturers Railway, at the end of the rails of the Wiggins Ferry, and this is true as to a shipment destined to the Fidel-Ganahl Lumber Company and to the Schroeter Coal Company. In other words, in respect of all shipments moving over the Manufacturers Railway, both outgoing and incoming, where it is interchange business, I entirely eliminate the Manufacturers Railway Company from any participation in the act of transportation.

852 The difference in the character of the service rendered between a carload of fire brick moved by the Missouri Pacific out of the factory yard of the Laclede-Christy Company, transported by the Missouri Pacific as a terminal carrier and delivered by it to the Terminal Railroad Association, and by the Terminal to the Louisville & Nashville destined to a point on my line, and a carload of boilers shipped by the John Nooter Boiler Works on the North Second street line of the Manufacturers Railway Company, handled by the Manufacturers Railway to its connection with the Wiggins, and then by the Wiggins delivered to the Louisville & Nashville Railroad destined to the same point, is that the former is handled by a bona fide common carrier, and that the second movement, that is, the shipment from the John Nooter Boiler Works, is handled by a plant facility. That is the difference, as I see it.

I regard the service that the Missouri Pacific road rendered in the case of the Laclede-Christy shipment as a transportation service from the point of origin at the plant to its destination, and it is so much a part of the act of transportation that in my judgment it is entitled to have the Missouri Pacific, that renders that service, to receive an allowance out of the through rate.

I do not think the distance over which a switching service is made has anything to do with determining as to whether that service is a plant facility or a transportation service.

In looking at this blueprint plan of the Christy plant of the Laclede-Christy Clay Products Company, this being the same plant referred to in the illustration of a movement a few questions back, and

assuming that the Oak Hill branch of the Missouri Pacific
853 runs along the line marked in pencil between the letters "A" and "B," and that the lead or spur tracks running from it between the points marked in pencil "A" and "C" represent the spur of over a mile from the main track to the first switch into the plant of the Laclede-Christy Company, and that the spur tracks forming facilities for the use of that plant are as indicated by the dotted lines on this blueprint, I will say that after seeing this plan showing its relation to the Missouri Pacific road that my answer would be the same as before.

I have no knowledge as to the amount of shipments made by the Medart Pulley Company over the Western Cable Railway.

I was unable to locate the Liquid Gas Company or the Schroeter Coal Company as being located on the line of the Western Cable Railway in addition to the Lemp Brewing Company.

The Western Cable Company publishes a tariff and enumerates its industries as four in number, but it does not look to me as either offering itself to the public as a common carrier, or as serving any considerable portion of the public of South St. Louis.

I do not think it could be classified as a common carrier. I do not think it should be classified as such, even if it should get a charter at Jefferson City, Mo. I think it is entitled to all the privileges to which the Manufacturers Railway is entitled under its charter. It is as much entitled to consideration as the Manufacturers Railway, whether it has one, or two, or many, or few industries on it.

In our attitude toward this case we do not desire to disregard the interests of the shipping public in any particular—far from it. What we desire in connection with this case is to ascertain the status of the
Manufacturers Railway in connection with business that is
854 handled by the Louisville & Nashville Railroad and may be handled in connection with the Louisville & Nashville Railroad.

Mr. Kirby: If your efforts succeed in this case and the entire Manufacturers Railway Company as to all service rendered by it is held to be a plant facility, one result will be that the Fidel-Ganahl Lumber Company hereafter on lumber shipped out by it, or lumber which it receives, will have to pay $2 more per car than its competitors located on other lines in St. Louis are required to pay, will it not?

Mr. Compton: The Fidel-Ganahl Lumber Company was located at its present site before the Manufacturers Railway constructed a track into it, and it would simply be a return to its former status.

Mr. Kirby: That doesn't answer my question. Won't you read to him the question, Mr. Stenographer?

(Question read by the reporter.)

Mr. Compton: Provided the Manufacturers Railway charges that amount for transportation between the Wiggins Ferry and the Iron Mountain.

Mr. Kirby: Well, you know, do you not, that that is the franchise rate which the Manufacturers Railway will have to charge?

Mr. Compton: I have so understood that that is the franchise rate.

Mr. Kirby: Can't you answer my question then, yes or no?

Mr. Compton: I said $2. I say it will be $2 more.

Mr. Kirby: They will have to pay $2 more than their competitors?

Mr. Compton: Than their competitors where?

Mr. Kirby: Than their competitors will be required to pay located on other lines in the City of St. Louis.

855 Mr. Compton: I don't answer yes as to that; $2 more than they now pay, is my answer.

Mr. Kirby: Add to my question this, that where deliveries to lumber companies located on other lines in the switching limits of the City of St. Louis receive their shipments and make them at the St. Louis rates delivered on their tracks.

Mr. Compton: The situation would be this: If the industry is located on the Wiggins Ferry track and the business moves across the Mississippi River, the difference in favor of the delivery by the Wiggins Ferry against the Fidel-Ganahl Lumber Company would be $2, provided that was the rate charged by the Manufacturers Railway. The Fidel-Ganahl Lumber Company would have an advantage as against those who are not located on the Wiggins Ferry of the difference between $2 per car for switching and the drayage charge, whatever it may be.

Mr. Kirby: Suppose the St. Louis Lumber Company were served entirely by the Iron Mountain; it is located at Broadway and Barton street; that the Fidel-Ganahl Lumber Company were served entirely by the Manufacturers Railway, located on the Second street line, competitors in the lumber business in South St. Louis, located about equal distances from public team tracks to which they could haul. Would not the withdrawal of allowances to the Manufacturers Railway Company force the Fidel-Ganahl Lumber Company to pay $2 more per car than the St. Louis Lumber Company pays, receiving its lumber through the terminal service of the Iron Mountain rate at the St. Louis rate?

Mr. Compton: Why, the difference would be identically the same as an industry located on the Second street track of the Iron Mountain Railroad—identically the same.

856 Mr. Kirby: Except that the hauling distance is practically the same, that is why I took these two illustrations.

Mr. Compton: I do not know what you mean by the hauling distance being practically the same—I don't know what that means.

Mr. Kirby: I mean the distance the Fidel-Ganahl Lumber Company would have to haul to get to a team track of the Iron Mountain is practically the same distance that the St. Louis Lumber Company would have had to haul to reach the Manufacturers Railway Company's public delivery tracks, it having under this assumption no connection with them.

Mr. Compton: Well, on the assumption that the distance is the same and the drayage is the same, that would be true.

Mr. Kirby: In other words, there would be a discrimination in that example against the Fidel-Ganahl Lumber Company of $2 per car, would there not, all other conditions being equal?

Mr. Compton: Not at all.

Mr. Kirby: Why not?

Mr. Compton: Because the situation is this: The Fidel-Ganahl Lumber Company would pay $2 per car to and from the connection of the Iron Mountain with the Wiggins Ferry. The Barton street lumber yard of the St. Louis Lumber Company would be served by team from the Second street track, and the Fidel-Ganahl Lumber Company would have an advantage of the difference between the $2 per car and the haulage from the Second street track of the Iron Mountain Railroad to the location of the St. Louis Lumber Company at Barton and Broadway.

Mr. Kirby: Then you are not able to say any shipment in the South St. Louis district as to which the withdrawal of allow-
857 ances to the Manufacturers Railway Company would create an undue discrimination or advantage to the shipper, are you?

Mr. Compton: Well, now, I don't want to be misunderstood. Of course, if allowances were discontinued to this industry at Barry street and Second, say the Bradbury Marble Co., to the Manufacturers Railway, by absorption, and they performed the service at $2 per car to the point of interchange with the Wiggins and the Iron Mountain, their amount would be increased then $2 per car, but they would still have an advantage over the previous arrangement that they had of moving the property from the team track of the Miller street yard of the St. Louis, Iron Mountain & Southern.

Now they were located there; they were served in that part of the town. If you put a track into them and they save thereby, they had already obtained a substantial advantage. Now shall we come in and pay you $4.50 or some other amount because the Manufacturers Railway, the creation of the Anheuser-Busch Brewing Association, puts a track into an industry? I do not think it is proper.

Mr. Kirby: Is it proper or reasonable for you to pay the Iron Mountain Railroad for its terminal service in delivering a car to some industry served by it when it is a transportation that originates on your line?

Mr. Compton: The Iron Mountain Railroad is a bona fide common carrier; so is the Louisville and Nashville Railroad, and as such in reciprocal arrangements interchange switching with each other, and in that case I think it is entirely proper because it is entirely dissociated from manufacturing, mining or other industrial pursuits.

If the Louisville and Nashville desires to do so, I re-
858 gard it as reasonable for it to pay the Iron Mountain Railroad for its service in transporting a car originating on our line delivered by us to the Wiggins Ferry Company and delivered by it to the Iron Mountain road, and the Iron Mountain performing a terminal switching service in order to deliver that car to the industry on Barton and Broadway; that is, I consider it reasonable for the Louisville and Nashville to pay the Iron Mountain switching service out of its rate.

In respect to the service rendered by the Manufacturers Railway Company for moving a car the same distance and delivering it to the St. Louis Lumber Company immediately across the street, I think

that no absorption whatever should be made to the Manufacturers Railway.

I understand there are breweries in St. Louis other than the Anheuser-Busch Brewing Association and the Lemp Brewery, which are located on the Missouri Pacific Railroad's spur track. On the St. Louis side there are probably two, on the East St Louis side one, and at Granite City one. I understand it to be a fact that those four breweries receive and make their shipments at the flat St. Louis and East St. Louis rates, that is, that the switching charge is absorbed by the line carrier.

In the event the allowance to the Manufacturers Railway is denied, these four breweries in competition with the Anheuser-Busch Brewing Association would have the benefit of their natural location. Although the Louis Obert Brewery is located immediately across the street from the track of the Manufacturers Railway, I do not think it is located on that track.

Mr. Kirby: Why should a boiler works located in a different part of the city be treated any differently as to its shipments than
859 the John Nooter Boiler Works located on the Manufacturers Railway.

Mr. Compton: You mean a boiler works a competitor of the John Nooter Boiler Works located on a common carrier track?

Mr. Kirby: Suppose it is located on the Terminal.

Mr. Compton: Yes, I think a man located on the Terminal ought to be treated the same as any industrial plant in the City of St. Louis, and the circumstances of the location of the John Nooter plant are different from the circumstances of location of the man that you have undertaken to describe as his competitor.

Mr. Kirby: That is the same old difference coming up again, isn't it? He had the misfortune to locate on a line as to which there were common owners between the line and the brewery, the railroad line on which he located and the Anheuser-Busch Brewing Association?

Mr. Compton: He selected a location that maybe he should not have selected—I don't know.

In regard to the St. Louis Basket and Box Company and the Cooperage Company located north of Arsenal street, I explained the discrepancy or inadvertence of showing that track in green. The correction has now been made showing this plant as located on the tracks of the Manufacturers Railway.

The Independent Coal and Supply Company at Rutger and Merchant streets is served exclusively by the Manufacturers Railway Company, but whether it is a team track or an industrial track the use of the Second street track is credited to the delivery of that coal in my previous testimony.

It is true that the matter of divisions or allowances out of the St. Louis rate, as between the Louisville and Nashville and the Manufacturers Railway Company would make no difference to the
860 shipping public in South St. Louis, assuming that they receive and make their shipments at the St. Louis rates, that is to

say, that the allowance does not affect the shipper at all so long as he is given the benefit of the St. Louis rate.

When the St. Louis Iron Mountain and Southern operated the rails of the Manufacturers Railway Company the St. Louis Iron Mountain and Southern extended its switching rate over the tracks which they leased from the Manufacturers Railway Company, and the charge to the connection with the Wiggins Ferry Company was half a cent a hundred, minimum $3 a car, plus $3.50 for the service over the tracks of the Manufacturers Railway Company, so that by the Manufacturers Railway operating its own property, the line carriers were saved $1 a car.

I have heard of the enterprise in St. Louis known as the Free Bridge, and have seen it. The western terminus of this bridge is at about Lombard street.

The north end of the Manufacturers Railway is just north of Convent street, but I do not know that there will be any point of connection between this bridge and the Manufacturers Railway.

I do not know, as a matter of railway knowledge, that the western approach of this bridge is projected and understood to have a southerly approach for a connection with the Manufacturers Railway, the Iron Mountain and Wiggins Ferry if they choose to use it.

Assuming that to be a fact, I do not know that that section of the Manufacturers Railway will be a valuable portion of its property. As I see it now, I do not see that this added facility at the end of the North Second street line has any usefulness to the shipping public of South St. Louis.

Mr. Kirby: This record, Mr. Compton, shows that the Man-
861 ufacturers Railway Company is under obligation to the City of St. Louis to construct seven miles of railway in and around—to construct or acquire seven miles in or around—East St. Louis, so as to extend its facilities to the shipping public of South St. Louis by that sort of a railroad extension. Assume that that is done directly in connection with the Free Bridge, without any connection by car transfer, will you then be of the same mind, that those facilities will not offer any material shipping advantages to the public in South St. Louis?

Mr. Compton: Why that part of the town is now accessible to and from all the East St. Louis lines. If that connection is made across there it will be just one additional line. I do not understand that there is any business moved between St. Louis and East St. Louis.

Mr. Kirby: Is there any reason in the world why there should not be an added line if the public wants it and is willing to take it?

Mr. Compton: I could not say anything other than what you want me to say.

Mr. Kirby: I want you to answer the question the way I would like to have you.

Mr. Compton: The public ought to have what they want if they are willing to pay for it.

I expressed an opinion like this, that if it was determined by the Honorable Commission that it would be proper to make an allowance to the Manufacturers Railway Company on business of the inde-

pendent shippers, that the charge on interchange business should not exceed $1 per car, this being the amount now assessed by the Manufacturers Railway for its Anheuser-Busch Brewing Association's interplant service. My second proposition was that it should not exceed $2 per car, this being the rate charged by the Manufacturers Railway for inter-terminal service, and my third proposi-
862 tion was that it should not exceed the amount which the Manufacturers Railway now charges for handling carload business to and from its connections, the Wiggins Ferry and the Iron Mountain, where the switching was to be absorbed.

In fixing the reasonable amount of allowances which the line carriers will make for terminal service rendered by other carriers, what other people pay has an influence in determining what our line would allow. However, it is not a controlling influence. Service ought to be charged for according to all the circumstances that may surround it at the time the rate is considered and established. Now what those circumstances are that may come up at the time are of course variable at different points. I did not fix the switching charges in St. Louis for any line, nor have I had any voice therein. As far as East St. Louis is concerned, the Louisville and Nashville switching charge there is half a cent a hundred pounds, with a minimum of $3 a car. It is, I think, a Commission made rate. In my testimony I used as an illustration a service rendered by the Burlington for a shipment from the Smith street plant of the Polar Wave Ice and Fuel Company and said that the St. Louis Transfer Railway would render their services up to the connection with the Burlington for $1.

This $1 charge applies to either intra or inter-movements. I should say that it would apply on movements from a point in the City of St. Louis to another point in the City of St. Louis, and likewise it would apply on connecting line business.

I did not pretend to speak as to absorption. I was speaking of the charge for the service rendered by the St. Louis Transfer Railway. I understand that this charge of $1 is a particular rate established by city ordinance.

863 I was simply making a comparison of the switching charge in St. Louis and did not cite this rate as a criterion for the reasonable value of the service rendered, but I thought it would be of interest to the Commission to see what the rates are on all of the lines, so that they could reach their own conclusions. I did not intend to evade the fact that this $1 rate was a rate fixed by ordinance.

As a result of my statistical computations and tables which I have filed as exhibits in connection with my testimony, my conclusion is that the average switching rate in the switching limits of St. Louis for terminal service rendered as a part of the transportation and absorbed by the line carriers is less than the Manufacturers Railway charge of $4.50 a car.

No, I have made no such statement that if I had the fixing of the reasonable amount it would be on a basis of one cent per hundred

pounds, minimum 50,000. I have entirely avoided making any reference whatever to the question of reasonable charge.

I have expressed my opinion in one respect only and that had reference to what should be the allowance if the Interstate Commerce Commission, in its judgment, found that it would be proper to make some allowance on shipments from the independent shippers. I have not criticised the charges of the Manufacturers Railway. I have laid the facts before the Commission. I do not think that I should make any suggestions as to what the railroads should charge for switching in the City of St. Louis.

The Railway Guide is published in Chicago. I do not know the name of the publisher. I do not know whether the American Railway Association has anything to do with its publication or not. I do not remember what Mr. Colston's question was in reference to the Manufacturers Railway Company's advertisement in this guide. I have no knowledge of this other than what I read in the Railway Guide. When Mr. Colston asked me the question as to how the Manufacturers Railway Company advertised itself in the Railway Guide, I answered that it advertised itself as a switching line.

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The matter came up in this way: I was looking over the guide and found the Manufacturers Railway and called it to Mr. Colston's attention, but as to whether the fact would tend to help the Commission decide whether the Manufacturers Railway Company is in fact rendering any switching or terminal services you will have to ask the attorney of the Louiville and Nashville road. I am not competent to answer that question.

The Official Railway Guide, September, 1912, at page 54, reads: "Manufacturers Railway Company. (Then follows the names of the different officers.) This company performs switching and terminal service." I do not think that my statement made on direct examination requires any modification.

In making my answer upon direct examination I did not intend or attempt to mislead anybody. With regard to industries on our line as being valuable when they contribute property for transportation, I do not regard a brewery different from any other kind of a shipper, and the more it ships the more valuable it becomes to the railway, provided the rates are reasonable and not unduly low. I do not know whether it would operate as a decided saving to all terminal lines if they could abandon the absorption of all switching allowance to other roads that do terminal service.

The Louisville & Nashville Railroad absorbs switching charges on competitive business at various places. The other railroads absorb Louisville & Nashville switching charges at various places. Now, just what would be the result on an average to the Louisville & Nashville if it discontinued all absorption on all business—we might lose, or it might be the other lines, I am not prepared to state.

865

Mr. Kirby: Now let us get down near home—would it not be a great saving to the Louisville & Nashville Railway if you could

abolish absorption of St. Louis switching allowances to the Manufacturers Railway Company?

Mr. Compton: We do not get any of the business and I don't know as it would make much difference.

Mr. Kirby: You have little interest then. Would it not be a saving to the Louisville & Nashville Railroad Company if the allowances to the Manufacturers Railway Company—would it not be a material saving to the Louisville & Nashville Railroad if the allowances which it now makes to all St. Louis lines should be abolished for St. Louis deliveries?

Mr. Compton: Now, Mr. Kirby, don't you know that that means the retirement of the Louisville & Nashville from all participation in business at the City of St. Louis? It does. It would mean our retirement.

Mr. Kirby: I do not know that as well as you do, but you would save money if that happened, so far as your switching allowances were concerned?

Mr. Compton: It will shut us out of participation and we would have no St. Louis business at all. If you shut our line out of the business you would not call that good business, would you?

Mr. Kirby: No, I would not. Then it is a necessary practice, is it not?

Mr. Compton: Reciprocal switching is very meritorious, in my opinion.

866 Mr. Kirby: Is not switching meritorious in respect of all terminal movement, regardless whether it is reciprocal or not?

Mr. Compton: If that terminal institution was not connected up with a manufacturing or mining or industrial concern.

GEORGE F. MOORE, recalled for further examination.

Examiner Mackley: Just make it clear in the record; I wish you would take these cases, as I have suggested to you, and show just how they move. Take a car coming into the Brewery Company, and tell me how it would move through the classification yards and all. I want to get this where I can find it when I want it. Show the Anheuser-Busch Brewing Association first, and then shippers.

Mr. Moore: A car received from the Terminal Railway would be delivered to us at interchange track near where you marked "B" in pencil, near the foot of St. George street, or at the additional interchange, marked "C", slightly south. It will then be taken by the engine of the Manufacturers Railway southwardly until it would clear the switch leading into the classification yard (D) or (E), depending upon the commodity that was loaded in the car. It would then be placed in the river yard and pushed north to some point between D, E and F. When final placement was made the Manufacturers Railway locomotive would get it from the north end of the yard and take it over the viaduct, up the main line, Pestalozzi street line, and deliver it in the so-called Second street yard, as named in the record, or any other delivery up to the so-called Ninth street yard as named in the record, or by using the cross-over take it up

the Dorcas street line diverging from Pestalozzi near Second, and deliver it to any of the tracks on the Dorcas street line.

867 Examiner Mackley: Now, give us the independent shipper.

Mr. Moore: An independent shipper desiring to deliver in any of the yards in the middle zone west of Second street would receive identically the same handling.

Examiner Mackley: Now, to a point on Second street.

Mr. Moore: If its final delivery were to be made to a point either on North or South Second street the car would be carried over the viaduct up the Pestalozzi street line sufficiently far to clear so as it could be backed into what is known as our First street yard, and through that to the ladder track marked "G," thence north around the Dorcas street approach to the Second street line, entering the Second street line at "H," where the movement north or south would be made as the destination required, on Second street.

Examiner Mackley: It it went south it would have to clear first "H" and back?

Mr. Moore: And back.

Examiner Mackley: When it is to an independent shipper or to the Anheuser-Busch Brewing Association it has to go over the viaduct?

Mr. Moore: Oh, yes.

Examiner Mackley: And coming back it would be about the same process reversed?

Mr. Moore: Coming back relatively the same, only an outbound movement is oftentimes made with less switching than an inbound car taken up direct through here without pulling back into these yards (indicating).

Examiner Mackley: Take a shipment from the middle zone which would come down over your viaduct into your——

868 Mr. Moore: Let me explain that. When loads are assembled for delivery to connecting line by way of the Wiggins Ferry, no matter by whom they may be loaded in the middle zone, they are usually set into what appears in the record as Second street yard on some of the most northerly tracks, until a cut of cars is sufficiently large to deliver over the viaduct and direct to the Terminal Railroad Association at its connection at Barton street, and from Barton street marked on this map "I." If a car is loaded either on the North or South Second street line it would be taken to a point on this map marked "H," brought into the First street yard to the point marked "G," and thence up the main line, Pestalozzi street, sufficiently far to clear, and then brought back over the viaduct and delivery made at or near the point marked "I."

Examiner Mackley: That is, on outbound traffic classification yards "E" or "F" are not used?

Mr. Moore: Rarely ever used, this being more convenient than the Second street yard.

Examiner Mackley: In other words, traffic outbound is classified up in the Second street yard or the yard down here marked "G"?

Mr. Moore: Yes, sir. The connections with the Iron Mountain at the points marked "J" and "K" on this blueprint are used for receipt and delivery of freight interchanged directly with the Iron Mountain. If originated in the middle zone it passes either down the Pestalozzi street main line or the Dorcas street line and the cross-over to the main line, and from thence into the First street yard, where delivery would be made at either one of these interchange connections. The reverse movement would be practically identical with loads received for delivery to the middle zone. If the load was received for industries either on North or South
869 Second street or up on the Iron Mountain, it would be received by the Manufacturers at either "J" or "K," taken to the Dorcas street cross-over to Second street at a point marked "H," and thence moved north or south as requirements might necessitate. And the reverse movement would be to take the load where it is prepared for shipment to the point "H," upon the same track, down over the latter to the connecting or interchange points marked "J" and "K" on this map.

Examiner Mackley: Where is the classification of the Iron Mountain business?

Mr. Moore: Usually in this First street or Horn yards.

Examiner Mackley: That is on inbound or outbound?

Mr. Moore: Inbound and outbound.

Examiner Mackley: Inbound and outbound?

Mr. Moore: Yes, sir. Occasionally we used Second street for the Iron Mountain if there is sufficient business being loaded to assemble it there from time to time.

Examiner Mackley: Usually it is where, the classification of the cars?

Mr. Moore: Usually the preparation of both the freight received and the freight forwarded for interchange with the Iron Mountain is made in the First street yard, but at times it may also be made in the Second street yard.

Examiner Mackley: I think that is clear.

In regard to these photographs filed by the Louisville & Nashville Railroad Company, will say that the Second street line in snowy weather requires constant attention because of the fact that after a train passes over it, only making two, three and sometimes four runs a day as we do, the wagon hauling and teaming
870 repacks the snow on the tracks so we have to work up and down Second street whenever we know we are going to make a movement in order to keep the track in good condition.

The Anheuser-Busch Brewing Association hauling beer from the brew house to the Second street yard must go as far east as a point located about half way between Broadway and Second street on Arsenal in order to reach the entrance to this yard. In other words, they travel from block 124, as shown in the blueprint, east to Arsenal and east on Arsenal to that point described, or down Pestalozzi street, south on Broadway and east on Arsenal to that same point.

When loading a mixed car, or a car containing both keg beer and

case beer, it is compelled to team from its Thirteenth street platform, which is shown in one of the photographs, down either Pestalozzi street or Arsenal street to the same opening in this yard, and put the case beer in with the keg beer, it being impossible to handle a car partly loaded with keg beer and ice for fear of the load shifting.

The reverse movement is often made in our interplant service by taking a car partly loaded with case beer and moving it down and switching it in to be finished with case beer. That movement does not require teaming and thus the results are accomplished by the interplant work that we do at our $1 rate.

At the Thirteenth street yard in the loading of case beer teams are not used, and at Ninth street the case beer is loaded directly into the cars by means of a merchandise conveyor, this conveyor handling the cases from the warehouse into the cars. In the Eleventh street yard the Anheuser-Busch Brewing Association
871 has a merchandise conveyor for the unloading of bottles. There are two tracks running up to Pestalozzi street instead of one—on one track bottles are unloaded by means of a merchandise conveyor. At Thirteenth street a merchandise conveyor is used, as well as at the Budweiser station at Ninth street.

The brewery does a very considerable amount of drayage or hauling in connection with shipments made over the Manufacturer's line moving in interstate commerce, it being necessary in preparing shipments for the transportation service.

(By consent of counsel map of the Christy plant of the Laclede-Christy Clay Products Company, referred to by several witnesses, was introduced in evidence and identified as Moore Exhibit No. 80.)
Hearing closed.

NAGEL & KIRBY,
WATSON & ABERNETHY,
SCHNURMACHER & RASSIEUR,
Attorneys for Complainants.

872 APPENDIX.

873 EXHIBIT No. 1 (G. F. MOORE), REC., P. 38.)

Interchange loads for fiscal year ended June 30, 1911			52,281
Interworks Movements—$100 per car			7,104 ABBA
Intracity Movements			167
Weigh Movements			2,294
Total loaded movements			61,846
Operating Expenses (Annual Report):			
Maintenance of Way and Structures	$30,836.71		
Maintenance of Equipment	25,225.37		
Traffic Expenses	1,725.91		
Transportation Expenses	53,861.48		
General Expenses	39,799.51		
Total Operating Expense			$151,448.98
Average cost per car		$2.4488	
Taxes: (Receipt attached)			6,956.48
Average cost per car		.1125	
Rentals (Annual Report):			
Track	24,000.00		
City Wharf	4,000.00		
Office and Miscellaneous	1,454.99		
Interest on Operating Capital	6,106.36		
Total			35,561.35
Average cost per car		.5749	
Property Investment (Annual Report):			
Investment since June 30, 1907—			
Road	468,112.71		
Equipment	53,616.08		
General Expenditures	71,848.60		
	593,577.39		
Interest on property investment at 5%			29,578.87
Average cost per car		.4799	
Interest on property purchased and expenses incident to extension south of Utah St. ($318,472.74) at 5%.			
Average cost per car		.2575	
Totals		$3.8736	$239,569.32

874 *Railroad, Bridge, and Telegraph Company Tax Bill.*

Manufacturers' Railway to the City of St. Louis.

For Railroad, Bridge And Telegraph Company Taxes, For The Year 1911. On Property In the City of St. Louis, As Assessed By The State Board of Equalization, Of The State of Missouri.

	Valuation.	Rate.	Taxes.
State Revenue	$314,000.00	15	$471.00
State Interest	.....	02	62.80
School Tax	.....	60	1,884.00
City Tax, New Limits	.....	1.41	4,427.40
City Tax, Old Limits	.....	.....	.....
Public Free Library	.....	04	125.60
Total Tax	$314,000.00	$2.22	$6,970.80
Rebate			121.42
			$6,849.38

Received from the.....the sum of $.....
being the amount of Railroad, Bridge and Telegraph Co. Taxes, for the year 1911, as assessed by the State Board of Equalization of the State of Missouri.

.....
Paid Sept. 1, 1911.

B. J. TAUSSIG, *Comptroller.*

EDMOND KOELN, *Collector.*
JNO. H. DUNN, *Chief Deputy.*

MR. R. H. WITTER, *Register.*

Copy.

875 EXHIBIT 9, SUP. RECORD, P. 87.)

Income Account—Manufacturers' Railway Co., After Closing—June 30, 1910.

Operating Income:			
Rail Operations:			
Operating Revenues (page 45)...	$207,475.59		
Operating Expenses (page 65)...	149,171.44		
Net Operating Revenue.....	.....	$58,304.15	
Outside Operations: None.			
Total Net Revenue.....	.....	58,304.15	
Taxes Accrued (page 81-A).....	.....	10,7[illegible].25	
Operating Income	.....	.....	$47,583.90
Other Income:			
Miscellaneous Income (page 71)....	.....	341.15	
Total Other Income.....	.....	.....	341.15
Gross Corporate Income.....	.....	.....	47,925.05

Deductions from Gross Corporate Income:			
Rents Accrued for Lease of Other Roads		24,000.00	
Other Rents—Debits		7,139.11	
Total Deductions from Gross Corporate Income			31,139.11
Net Corporate Income			$16,785.94

876 (EXHIBIT 10. SUP. RECORD, P. 87.)

Trial Balance—Manufacturer's Railway Co.

June, 1910, After Closing.

1	Capital Stock		$250,000.00
2	Treasury Stock	$225,000.00	
4	Cost of Road	517,926.81	
5	Cost of Equipment	42,491.09	
12	Material	15,850.08	
13	Stationery and Printing	549.15	
14	Fuel	136.80	
16	Adolphus Busch Interest Account		14,859.83
17	Suspense		1,818.65
18	Agent	76,351.40	
20	Insurance		603.98
21	Advanced Rents	1,064.52	
23	Anheuser-Busch Brew. Ass'n	266.56	
24	Cash		6,248.96
25	Estimated Taxes		5,217.00
30	Depreciation of Equipment		24,496.83
32	Profit and Loss		56,312.17
38	Adolphus Busch		390,000.00
39	South Side Bank		50,000.00
47	St. Louis Basket & Box Co.	57.92	
53	N. K. Fairbank Co.	625.64	
54	Lease and Rental		12,000.00
55	St. Louis Union Trust Co.		350,000.00
57	Rate Litigation		12,657.70
60	Interstate Warehouse & R. Co.	318,447.76	
61	Western Fdy. & Sash Wt. Co.	342.20	
62	Independent Coal & Supply Co.	12.10	
63	Eastern Extension	24.98	
64	Bradbury Marble Company	239.24	
65	Adolphus Busch Loan Account	150.00	
66	Depreciation of Tracks and Strs.		25,285.13
		$1,199,536.25	$1,199,536.25

877 (EXHIBIT 11. SUP. RECORD, p. 87.)

Income Account—Manufacturers' Railway Co., After Closing, June 30, 1911.

Operating Income:			
Rail Operatings:			
Operating Revenues (Page 45)...	$234,047.72		
Operating Expenses (Page 65)...	151,448.98		
Net Operating Revenue.....	.....	82,598.74	
No Outside Operations (Page 67).....	.....	*	
Total Net Revenue.....	.....	82,598.74	
Taxes Accrued (Page 81-A).....	.....	6,956.48	
Operating Income	.....	.....	$75,642.26
Miscellaneous Income (Page 71).....	.....	1,145.14	
Total Other Income.....	.....	.....	1,145.14
Gross Corporate Income.....	.....	.....	76,787.40
Deductions from Gross Corporate Income:			
Rents Accrued for Lease of Other Roads.....	.....	24,000.00	
Other Rents—Debits	.....	5,454.99	
Separately Operated Properties Interest.	.....	6,106.36	
Total Deductions from Gross Corporate Income	.....	.....	35,561.35
Net Corporate Income.....	.....	.....	41,226.05

878 (EXHIBIT 12. SUP. RECORD, p. 87.)

Trial Balance—Manufacturers' Railway Co., After Closing June 30th, 1911.

Property Investment:			
B 1-B. A—Road		$468,112.71	
B—Equipment		53,616.08	
C—General Expenditures		71,848.60	
Reserve for Depreciation—Cr.			
B 1-C. Equipment	.....		$33,892.97
Track and Structures.....	.....		30,342.17
Miscellaneous Investments:			
B 6. A—Physical Property:			
Interstate Warehouse & R. Co.....		293,247.03	
Eastern Extension		176.98	
Preliminary Survey S. W. Ext.....		1,370.10	

Working Assets:			
B 7. Cash			6,164.38
B 9. Marketable Securities:			
L A. —Stocks—Common		225,000.00	
B 12. Balance Due from Agent		275,504.52	
B 13. Miscellaneous—Accts. Rec.:			
Miscellaneous Accts.		615.52	
B 14. Materials and Supplies		9,031.29	
Stationery and Printing		500.78	
B 18. Deferred Debit Items:			
Wharf Rent paid in Advance		1,064.53	
Working Liabilities:			
B 28. Stocks			250,000.00
B 34. Loans and Bills Payable:			
A. Busch			884,500.00
South Side Bank			10,000.00
A. Busch Loan Acct.			3,490.79
B 37. Miscellaneous Accts. Payable:			
Auth. Claims			5.56
B 42. Accrued Liabilities:			
A. Busch Int. Acct.			24,473.71
Lease and Rental			38,325.00
B 43. Accrued Taxes			3,332.06
Operating Reserve:			
Insurance			1,795.48
Rate Litigation			14,202.04
B 47. Other Deferred Cr. Items:			
Suspense			234.87
B 50. Profit and Loss			99,329.13
		$1,400,088.14	$1,400,088.14

879 (EXHIBIT 13, SUP. RECORD, P. 88.)

Trial Balance, Manufacturers' Railway Co., November, 1911.

Names of Accounts:			
Property Investment:			
B 1-B. Investment since June 30, 1907—			
A—Road		$483,891.48	
B—Equipment		53,686.08	
C—General Expenditures		30,765.79	
B 1-C. Reserve for accrued Depreciation—Cr.			
A—Equipment			$38,360.97
B—Track and Structures			32,541.07
B 6. Miscellaneous Investments:			
A—Physical Property:			
Interstate Warehouse & Realty Co.		301,625.98	
Eastern Extension		176.98	
Preliminary Survey S. W. Extension.		1,370.10	

Working Assets:		
B 7. Cash	.....	2,618.28
B 9. Marketable Securities:		
A—Treasury Stock	225,000.00	
B 11. Traffic and Car Service Balances due from other companies:		
Per Diem and Reclaim Balances	407.75	
B 12. Net Balance due from Agent	4,280.42	
Reparation Account	288,858.57	
B 13. Miscellaneous Accounts Receivable	594.72	
B 14. Materials and Supplies:		
Materials	9,746.27	
Stationery and Printing	866.96	
Fuel	91.20	
Deferred Debit Items:		
B 18. Rents and Insurance Paid in Advance, Wharfage	1,397.88	
Liabilities:		
Stock:		
B 28. Capital Stock	.....	$250,000.00
Working Liabilities:		
B 34. Loans and Bills Payable:		
Adolphus Busch	.....	894,500.00
South Side Bank	.....	10,000.00
B 37. Miscellaneous Accounts Payable:		
Authorized Claims	.....	41.21
880		
Accrued Liabilities Not Due:		
B 42. Unmatured Interest, Dividends and Rents:		
A. Busch Interest Account	.....	43,090.84
Lease and Rental	.....	49,600.00
B 43. Taxes Accrued	$570.78	
Deferred Credit Items:		
B 45. Operating Reserve:		
Insurance	.....	1,121.67
Rate Litigation	.....	36,565.51
B 47. Other Deferred Credit Items:		
Suspense	.....	234.87
Profit and Loss:		
B 50. Balance	.....	99,329.13
Maintenance of Way and Structures	13,089.46	
Maintenance of Equipment	11,246.82	
Traffic Expense	590.00	
Transportation Expense	28,126.91	
General Expense	36,455.31	
Operating Revenue	.....	109,747.89
Rents	12,591.65	
Taxes	3,229.42	
Rents Receivable from Joint Facilities:		
Joint Yards and Terminals	.....	34.80

Hire of Equipment:		
A—Equipment Leased:		
Rents Accrued Receivable.....	.....	8.70
B—Equipment Interchanged:		
Balance	.....	407.75
Miscellaneous Income:		
Office Building	.....	335.66
Real Estate	.....	170.50
Clearing Account:		
A. B. B. A. Extension, 9th and Wyoming...	48.32	
	$1,568,708.85	$1,568,708.85

881 (*Contracts with Cotton Belt.*)

(EXHIBITS 15 AND 16, REC., P. 95.)

ST. LOUIS, Mo., Dec. 19, 1910.

Mr. Edward A. Moseley, Sec., Interstate Commerce Commission, Washington, D. C.

DEAR SIR: I enclose in this letter copies of the two contracts entered into between the Manufacturer's Railway Company and the St. Louis Southwestern Railway Company governing the use of certain trackage and other facilities furnished by the Manufacturers' Railway. I am filing these agreements with you to be relieved of the necessity of reporting them in detail on each of our annual reports.

Respectfully,

——— ———,

President and General Manager.

Agreement Between the Manufacturers' Railway Company and the St. Louis Southwestern Railway Company for Handling Business in the City of St. Louis, Using the Tracks, Facilities and Motive Power of the Manufacturers' Railway Company.

This agreement, made and entered into this Ninth day of November, 1910, by and between the Manufacturers' Railway Company, of the one part, and the St. Louis Southwestern Railway Company, of the other part,

Witnesseth: Whereas, the Manufacturers' Railway Company owns and operates a railway in the south part of the City of St. Louis, and

Whereas, the St. Louis Southwestern Railway Company desires to use certain team tracks, private sidings and other facilities in the City of St. Louis now owned, or which may hereafter be owned, by said Manufacturers' Railway Company,

Now, therefore, in consideration of a trackage charge or rental of One Dollar ($1.00) per car to be paid it by said St. Louis Southwestern Railway Company for all loaded cars handled between the

aforesaid tracks of the Manufacturers' Railway Company and the St. Louis Transfer Railway Company, said Manufacturers' Railway Company does hereby grant to said St. Louis Southwestern Railway Company the use of its said team tracks, private sidings and other facilities, together with the transportation service necessary to receive and deliver loaded and empty cars between the St. Louis Transfer Railway Company and said tracks.

882 Provided, that forestry products only, will be handled to the private industrial tracks located along the line of said Manufacturers' Railway Company on a basis of One Dollar ($1.00) per car; provided, further that said St. Louis Southwestern Railway Company shall pay all Per Diem on the equipment handled under this agreement by said Manufacturers' Railway Company, thereby releasing and relieving said Manufacturers' Railway Company from any car rental charged whatever, and shall collect all lawful car service and in all essential features consider the business handled under this agreement as its own operations.

Said Manufacturers' Railway Company assumes all risks and responsibility attendant upon the transportation of cars on its lines, provided, however, that after a loaded car shall be placed for unloading, or an empty car shall be placed for loading, and until such time as the car shall be duly released by said St. Louis Southwestern Railway Company and instructions for further movement shall be given said Manufacturer's Railway Company, said St. Louis Southwestern Railway Company shall be liable and responsible for the care and safety of both car and contents.

This agreement shall only apply to shipments into and out of St. Louis handled by road haul, in part at least, by said St. Louis Southwestern Railway Company.

In witness whereof, said Manufacturers' Railway Company has caused these presents to be signed in its corporate name by its President and General Manager and to be attested with its corporate seal by its Secretary; and said St. Louis Southwestern Railway Company has caused these presents to be executed in its corporate name by its Vice President and General Manager and to be attested with its corporate seal by its Assistant Secretary.

(Copy.)

MANUFACTURERS' RAILWAY COMPANY,

(Signed) By G. F. MOORE,
President and General Manager.

Attest:
(Signed) OTTO H. RASSFIELD, *Secretary.*

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

(Signed) By F. H. BRITTON,
Vice-President and General Manager.

Attest:
(Signed) G. K. WARNER,
Assistant Secretary.

883 This agreement, made and entered into this Ninth day of November, 1910, by and between the Manufacturers' Railway Company, of the one part, and the St. Louis Southwestern Railway Company, of the other part,

Witnesseth: Whereas, said Manufacturers' Railway Company contemplates erecting a freight warehouse in the City of St. Louis, Missouri, and constructing tracks leading thereto, and

Whereas, said St. Louis Southwestern Railway Company desires to make use of said freight warehouse and tracks when completed,

Now, therefore, said parties do hereby, each in consideration of the promises and undertakings of the other, agree to and with each other as follows:

1. That said St. Louis Southwestern Railway Company will pay to said Manufacturers' Railway Company for the use of said freight warehouse and tracks an amount equivalent to One Dollar ($1.00) for each loaded car, and in addition Thirty cents (30c.) per ton for the loading and unloading of all freight handled in or through said freight warehouse by said St. Louis Southwestern Railway Company.

2. Said Manufacturers' Railway Company agrees to load and unload all freight handled at said freight warehouse and to employ a force sufficient for that purpose.

3. Said Manufacturers' Railway Company shall perform all transportation services necessary to place cars for loading and unloading and to remove all cars loaded or unloaded for delivery to the St. Louis Transfer Railway Company, or other direct connections of said Manufacturers' Railway Company.

Said Manufacturers' Railway Company assumes all risk and responsibility attendant upon the transportation of cars on its lines, provided, however, that after a loaded car shall be placed for unloading, or an empty car shall be placed for loading, and until such time as the car shall be duly released by said St. Louis Southwestern Railway Company and instructions for further movement shall be given said Manufacturers' Railway Company, said St. Louis Southwestern Railway Company shall be liable and responsible for the care and safety of both car and contents.

4. Said Manufacturers' Railway Company shall furnish suitable office quarters for the clerical force necessary to conduct the business of said St. Louis Southwestern Railway Company transacted in said freight warehouse.

5. Said St. Louis Southwestern Railway Company shall furnish all clerical force necessary for the transaction of its own busi-
884 ness in said freight warehouse, without cost or expense of any kind to said Manufacturers' Railway Company.

6. Said Manufacturers' Railway Company hereby reserves the right and shall have the right to enter into arrangements and agreements with other companies to secure such other companies as tenants for the use of said freight warehouse and facilities or portions thereof; provided, that the use of such warehouse and facilities by other tenants shall not obstruct or interfere with the reasonable use thereof by said St. Louis Southwestern Railway Company.

7. Said St. Louis Southwestern Railway Company shall pay all Per Diem charges on the equipment used by said Manufacturers' Railway Company in order to carry out its obligations under this agreement, and to relieve and release said Manufacturers' Railway Company from all liability of car rentals and charges on same.

8. Said Manufacturers' Railway Company shall immediately upon the execution of this agreement take the necessary steps to acquire the real estate, easements and rights of way needed for said freight warehouse and suitable trackage leading thereto; and as soon as such real estate, easements and rights of way have been procured by purchase, lease, condemnation or otherwise, shall begin the work of erecting said freight warehouse and constructing and laying down said tracks and shall prosecute same to completion with all reasonable diligence and dispatch.

In witness whereof, said Manufacturers' Railway Company has caused these presents to be signed in its corporate name by its President and General Manager and to be attested with its corporate seal by its Secretary; and said St. Louis Southwestern Railway Company has caused these presents to be executed in its corporate name by its Vice-President and General Manager and to be attested with its corporate seal by its Assistant-Secretary.

(Copy.)

MANUFACTURERS' RAILWAY COMPANY,

(Signed) By G. F. MOORE,
President and General Manager.

Attest:
(Signed) OTTO H. RASSFIELD, *Secretary.*

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

(Signed) By F. H. BRITTON,
Vice-President and General Manager.

Attest:
(Signed) G. K. WARNER,
Assistant Secretary.

885 (EXHIBIT 43, SUP. RECORD, P. 201.)

Statement of Cars Handled for $2.00 *Revenue.*

Fiscal Year Closing June 30, 1911.

Months.	Forwarded.		Received.		Total in and out.		
	ABBA.	Misc.	ABBA.	Misc.	ABBA.	Misc.	
July, 1910.....	179	57	44	129	223	186	409
Aug. "	167	67	42	171	209	238	447
Sept. "	131	66	28	135	159	201	360
Oct. "	112	161	29	152	141	313	454
Nov. "	69	330	85	199	154	529	683
Dec. "	86	269	54	104	140	373	513
Jan., 1911.....	78	229	67	107	145	336	481
Feb'y "	62	68	46	117	180	185	293
March "	61	34	63	132	124	166	290
April "	67	43	70	131	137	174	311
May "	108	43	96	131	204	174	378
June "	247	59	110	130	357	189	546
Totals.....	1367	1426	734	1638	2101	3064	5165

Interworks 7104 cars.
Switching at $2.00 rate, 5165 cars.

Manufacturers' Railway Company.

Statement.

Mo.	ABBA. Fwd.	ABBA. Rec'd.	Miscl. Fwd.	Miscl. Rec'd.	Total cars interchanged.
Jan. ...	1100	1285	129	402	2916
Feb. ...	1180	1271	141	447	3039
Mar. ...	2063	1541	175	475	4254
Apr. ...	1491	1264	187	359	3301
May ...	1865	1369	156	431	3821
Jun- ...	2509	1498	217	417	4641
Jul-	2476	1834	222	429	4961
Aug. ...	2548	1965	233	566	5312
Sep. ...	2047	1606	219	522	4394
Oct.	1809	1676	197	622	4304
Nov. ...	1402	1606	201	717	3926
Dec. ...	1449	1566	179	728	3922
	21939	18461	2256	6155	48791

Mo.	ABBA. Fwd.	ABBA. Rc'd.	Miscl. Fwd.	Miscl. Rec'd.	Total cars interchanged.	Gain.	Loss.
Jan.	1395	1527	163	635	3720	804	
Feb.	1413	1229	175	584	3401	362	
Mar.	1746	1352	215	675	3985	....	266
Apr.	1654	1434	253	577	3918	617	
May	2405	1544	279	576	4804	983	
Jun-	2869	1811	330	621	5631	990	
Jul-	2726	1956	318	700	5700	739	
Aug.	2840	1971	356	738	5905	593	
Sep.	2484	1965	304	695	5448	1054	
Oct.	1760	1948	283	835	4826	522	
Nov.	1291	1465	251	742	3749	....	177
Dec.	1503	1300	285	784	3852	....	70
	24086	19502	3212	8142	54942	6664	513
Gain	2147	1021	956	2027	5151	5151	
Gain Per Ct.....	.098	.055	.424	.331	.106		

THIS PAGE BOUND VERTICAL IN BOOK

887 (EXHIBIT 45, REC., P. 219.)

Carload Statement.

March, 1911–December, 1911.

Northern Zone.

Name.	Outbound.	Inbound.	Total.
Cannon Lumber & Box Company	...	8	8
N. K. Fairbank Company	31	342	373
P. Heibel & Sons	4	94	98
Independent Coal & Supply Co.	...	230	230
Bradbury Marble Company	25	68	93
B. Klauber's Sons Junk Co.	70	40	110
Jno. Nooter Boiler Works	18	9	27
Pauly Jail Building Company	103	...	103
St. Louis Rattan Company	47	3	50
Star State Lumber Company	...	7	7
Western Foundry & Sash Wt. Co.	29	184	213
Robert B. Brown Oil Co.	12	...	12
Geo. J. Fritz Fdy. & Mach. Co.	...	15	15
Loy Lange Box Company	3	23	26
Shultz Belting Company	...	19	19
St. Louis Southwestern Ry. Co.	94	43	137
Eau Claire-St. Louis Lumber Co.	35	207	242
Various	22	23	45
	493	1315	1808

Southern Zone.

Name.	Outbound.	Inbound.	Total.
Fidel Ganahl Lumber Company	37	504	541
Hunkins-Willis Lime & Cement Co.	1	256	257
A. Klauber Son's Iron & Metal Co.	42	6	48
Clarksville Cider Company	11	25	36
Ladenberger Lumber Company	1	22	23
Various	2	1	3
	94	814	908

888 (EXHIBIT 46, REC., P. 223.)

Carload Statement.

March, 1911–December, 1911.

Middle Zone.

Name.	Outbound.	Inbound.	Total.
Anheuser Busch Brewing Ass'n	21268	16747	38015
Co-operative Coal Company	...	2	2
A. Busch Glass Works	22	560	582
Chas. Ehlermann H. & M. Co.	14	...	14
Green Tree Brewery	348	294	642
American Brewing Company	641	617	1258
F. W. Goeke & Company	31	...	31
E. B. Hill & Bro.	7	51	58
J. H. Belz Provision Co.	3	8	11
Brueckmann Cooperage Company	57	52	109
Koch Builders Supply Co.	3	75	78
Manufacturers' Railway Co.	3	163	166
Morris & Company	...	278	278
National Brewing Company	84	32	116
Noelke Richard Iron Works	1	30	31
Louis Obert Brewing Company	331	220	551
Purina Mills	245	...	245
St. Louis Basket & Box Co.	98	206	304
St. Louis Cooperage Co.	212	463	575
St. Louis Dressed Beef & Prov. Co.	...	156	156
St. Louis Refgr. Car Company	24	166	190
H. N. Saylor, Jr.	1	23	24
Schroeter Coal Company	...	735	735
South Side Coal Company	...	21	21
Standard Furniture Company	27	23	30
Stute & Co. P. & V. Works	5	38	43
Union Brewing Company	...	73	73
Union Fuel Company	...	225	225
Continental Brick Company	...	47	47
Lumaghi Coal Company	...	60	60
St. Louis Gravel & Sand Company	...	14	14
R. A. Anderson Construction Co.	...	9	9
Central Dry Plate Company	...	6	6
Fruin-Colnon Construction Company	3	10	13
Warren Steel Casting Company	...	6	6
Cramer Dry Plate Company	4	10	14
U. S. Quarter Master Depot	16	. .	16
Waldstein Lumber Company	12	6	18
R. W. Gillespie	6	...	6
M. W. Warren Coal & Coke Co.	1	49	50
Various	98	66	164
Total	**23565**	**21541**	**45106**

889 (EXHIBIT 47, REC., P. 237.)

Distribution of Business Received and Forwarded.

March, 1911–December, 1911.

Name of Railroad.	Outbound.	Inbound.	Total.
Baltimore & Ohio Southwestern	520	1210	1730
Chicago, Burlington & Quincy—East	932	241	1173
Chicago, Burlington & Quincy—West	1560	1932	3492
Cleveland, Cincinnati, Chicago & St. Louis	803	799	1602
Chicago, Peoria & St. Louis	476	776	1252
Chicago, Rock Island & Pacific	1760	656	2416
Chicago & Alton	1689	1216	2905
Chicago & Eastern Illinois	430	354	784
Illinois Central	1364	1471	2835
East St. Louis & Suburban	...	48	48
Litchfield & Madison	56	44	100
Missouri, Kansas & Texas	958	647	1605
Vandalia	473	1918	2393
Wabash—East	610	1641	2251
Wabash—West	1831	1330	3161
Mississippi Valley Transfer	4	19	23
Louisville & Nashville	309	508	1017
Missouri Pacific	1417	1271	1688
Mobile & Ohio	886	833	1719
Southern	1020	641	1661
Terminal Railroad Association	744	740	1484
Toledo St. Louis & Western	1415	882	2297
St. Louis & Belleville Electric	...	74	74
St. Louis & O'Fallon	...	112	112
St. Louis & San Francisco	1254	1382	2636
St. Louis, Iron Mountain & Southern	1049	1581	2630
St. Louis & Southwestern	2329	1285	3614
St. Louis, Troy & Eastern	61	59	120
	24152	23670	47822

Industrial.

Business To and From

	Outbound.	Inbound.	Total.
Middle Zone—Page "A"	23565	21541	45106
Northern Zone—Page "B"	493	1315	1808
Southern Zone—Page "B"	94	814	908
Total	24152	23670	47822

Middle Zone	9432%
Northern Zone	0379%
Southern Zone	0189%
Middle Zone—ABBA	8428%

890 *Percentages and Reductions.*

From Exhibit No. 1 and 44—Requested by Ex. Mackley and Furnished.

		Cars.	Cars.
Interchanged loads for fiscal year ended 6–30–11.	At through rates.....	47116	
	At through rates plus $2.00 local switching	5165	
	—Total interchanged		52281
	This movement is 84.54% of total cars handled.		
Interworks Movements (A. B. B. A.).....			7104
	This movement is 11.48% of total cars handled.		
Intra City Movements (Mfgrs. Ry. Rails only).....			167
	This movement is .0027% of total cars handled.		
Weigh Movements (Approx. 81.03% A. B. B. A.).....			2294
	This movement is .0371% of total cars handled.		

If A. B. B. Ass'n business was 81.03% of interchanged loads, and the interchanged loads were 84.54% of total loads handled, then 68.50% of power used could be charged to interchange business handled for A. B. B. Ass'n.

The Interworks switching was 11.48% of total loads handled, and all of this service being rendered for the A. B. B. Ass'n would consume 11.48% of power.

If 81.03% of Weigh Movements was performed for A. B. B. Ass'n, it would have consumed .0306% of power used for weight movements.

Total power used for handling entire A. B. B. Ass'n business, on this basis, would be 83.04% of power used.

NOTE.—Through tariffs participated in by other lines, apply on 47,116 of the 61,846 loaded car movements.

(Copy of Amended Lease, Filed and Referred to in Record, Pages 49 and 50, but Not in the Record.)

This agreement, made and entered into this 1st day of December, 1911, by and between the Anheuser-Busch Brewing Association, a corporation of St. Louis, Missouri, hereinafter referred to as the "Association," party of the first part, and the Manufacturers' Railway Company, a corporation of said city of St. Louis, Missouri, hereinafter referred to as the "Railway," party of the second part,

891 Witnesseth: That in consideration of the rents herein reserved and agreed to be paid, said Association hereby leases to said Railway, for a period of twenty (20) years, from January

1st, 1912, for railway and railway right-of-way purposes, those portions of the land whereon said Association has laid certain railway track, spurs and sidings, together with the legal track clearances, lying within an area or territory of land bounded by Lynch Street on the north, First Street on the east, Utah Street on the south and Thirteenth Street on the west, all in the City of St. Louis, State of Missouri; said Association reserving unto itself, as a rental therefor, the sum of Two Thousand ($2,000.00) Dollars per month, which sum said Railway agrees to pay to said Association monthly in advance, beginning with the first day of January, 1912.

Said Association further gives and grants to said Railway the right and privilege to construct and operate within the territory above described additional spurs and sidings, should the Railway so desire, provided that no construction of additional spurs and sidings shall be deemed authorized under this agreement without the written consent and approval of said Association.

Said Association hereby gives and grants to said Railway the privilege of permitting its patrons and customers to have ingress and egress to all convenient points along said tracks, spurs and sidings with their teams and vehicles, along, over and on any of the lands of said Association within the area or territory aforesaid.

Said Association further gives and grants to said Railway the right and privilege to use and operate the aforesaid tracks, spurs and sidings for railway purposes. In consideration of the foregoing privileges to use said tracks, spurs and sidings, said Railway agrees and covenants to and with said Association, to maintain the same and keep them in good order and repair at its sole cost and expense. Said Association further agrees to pay the taxes imposed upon the lands hereby leased as such, excluding however taxes levied upon tracks, sidings and spurs which latter taxes the Railway agrees to pay.

Said Railway Company agrees to pay the rent above reserved, when due and payable, and in all respects whatsoever to comply with the terms and conditions of this lease, and that a failure on its part so to do, shall and will authorize said Association to terminate this lease, on thirty (30) days' written notice by it to said Railway.

This agreement is in substitution for a lease executed be-
892 tween the parties hereto, on the 31st Day of December, 1908, which lease is hereby canceled.

Executed in duplicate the day and year first above written.

ANHEUSER-BUSCH BREWING ASSOCIATION,

By —— ——, *Vice President.*

Attest:

—— ——, *Secretary.*

MANUFACTURERS' RAILWAY COMPANY,

By —— ——.

Attest:

—— ——, *Secretary.*

(EXHIBIT 48, REC., P. 713.)

Trial Balance General Ledger Manufacturers' Railway Co., June, 1912.

	Cr.	Dr.
Assets:		
B 1 B. Property Investment since June 30, 1907:		
A—Road	$491,956.91	
B—Equipment	53,749.33	
C—General Expenditures	120,578.00	
B 1 C. Reserve for Accrued Deprecn. Cr.		
A—Equipment	.....	$13,347.65
B—Tracks & Structures	.....	35,619.53
B 6. Miscellaneous Property Investment:		
Physical Property:		
I. W. & [illegible] Co.	293,192.02	
Gooddard Realty Co.	3,400.00	
Eastern Extension	213.98	
Prelim. Survey S. W. Ext.	1,370.10	
Working Assets:		
B 7. Cash	11,953.96	
Petty Cash Per Diem Accts.	1,000.00	
B 9. Marketable Securities:		
A—Stocks Unissued	125,000.00	
B 11. Balance due from Conn. Lines, Per Diem Bal. due from Forgn. Rds.	4,000.82	
B 12. Net Bal. due from Agent	5,599.82	
Reparation Account	288,848.33	
B 13. Misc. Accounts Receivable	825.19	
B 14. Materials & Supplies:		
Materials	7,453.97	
Sta. & Prtg.	805.49	
Fuel	237.60	
B 18. Deferred Debit Items:		
Rents paid in advance (Wharfage)	1,137.51	
B 26. Other Deferred Debit Items:		
Reconstruction First Street Yard (Clearin[illegible])	10,903.13	
Construction New Shop & Round House	892.70	

894 *Trial Balance General Ledger, June, 1912, Manufacturers Railway Co.*

Liabilities:			
B 28. Capital Stock	.....	.....	$250,000.00
B 34. Working Liabilities:			
Loans & Bills Payable:			
Adolphus Busch	.....	.....	894,500.00
S. Side Bank	.....	.....	10,000.00
Nat. Bank of Com.	.....	.....	100,000.00
A. Busch Loan Acct.	.....	.....	10.00
B 35. Balances due connecting Lines:			
Adv. & P. Pays due Con. Lines	.....	.....	328.78
B 37. Authorized Claims	.....	.....	199.17
B 42. Accrued Liabilities Not Due:			
Unmatured Int. Dividends & Rents Payable:			
A. Busch Int. Acct.	.....	.....	29,816.64
Lease & Rentals	.....	.....	7,200.00
B 43. Taxes Accrued	.....	.....	3,424.68
B 45. Deferred Credit Items:			
Operating Reserves:			
Insurance Reserve	.....	.....	1,396.41
Rate Litigation	.....	.....	17,618.41
B 47. Salvage on Cooperage found in Yard	.....	$106.00	
Suspence	.....	.....	224.87
B 50. Profit & Loss:			
Balance	.....	.....	26,298.57
Maint. of Ways & Structures	.....	23,958.12	
Maint. of Equipment	.....	24,790.91	
Traffic Expenses	.....	1,450.82	
Transportation Expenses	.....	67,316.91	
General Expenses	.....	50,762.69	
Operating Revenue	.....	.....	241,937.73
Rents	.....	36,779.99	
Taxes	.....	7,483.12	
Rents received from Jt. Facils.:			
Joint Yds. & Terminals	.....	.....	69.40
Hire of Equipment:			
A—Leased	.....	.....	17.34
B—Interchanged	.....	.....	2,742.47
Miscellaneous Income:			
Office Building	.....	.....	660.27
Real Estate	.....	.....	345.50
		$1,635,767.42	$1,635,767.42

(EXHIBIT 49, REC., PAGE 714.)

(EXHIBIT 49, REC., PAGE 714.)

Comparative Operating Statement—June, 1912.

Names of accounts.	O. E.	June, 1912.	June, 1911.	July 1, 1911. June 30, 1912.	July 1, 1910. June 30, 1911.
Supt. Maint. of W. & S.	1	$140.00	$140.00	$1,686.85	$1,679.79
Maint. Rdwy. & Tracks	2	1,284.02	2,659.22	21,174.67	27,866.95
Track Structures	3	.....	71.84	521.47	445.53
Maint. Brdg. Dcks—Whrf.	4	5.44	12.21	224.49	12.21
Injuries to Persons	5				
Other M. W. & S. Expns.	6	39.93	46.00	402.70	832.23
Sta. Tracks & Other Fac. Dr.	7				
Sta. Tracks and Other Fac. Cr.	8	**2.55**	.....	**52.06**	
Supt. M. & W.	9	222.50	278.67	2,983.26	3,013.26
Locomotive Repairs	10	684.99	920.78	11,575.63	10,878.04
Cars, Repairs	11	172.56	48.97	2,338.88	884.29
Floating Equip. Repair	12				
Work Equip. Repr.	13				
Equipment Renewals	14				
Equipment Depreciation	15	372.82	893.60	7,598.52	9,396.14
Injuries to Persons, M. of W.	16				
Other M. of E. Expenses	17	24.22	63.00	294.62	1,053.64
Mt. Jt. Equipment at Terminal, Cr.	18				
Mt. Jt. Equipment at Terminal, Dr.	19				
Traffic Expenses	20	146.82	92.50	1,450.82	1,725.91
Sup. and Disp. Trains	21	320.00	320.00	3,984.85	3,865.00
Station Service	22	871.37	307.42	7,763.20	4,352.71
Yard Enginemen	23	1,139.55	805.**23**	10,830.93	7,516.99
Other Yard Employees	24	2,048.14	1,705.21	20,006.37	15,690.80
Fuel for Lard Locoms.	25	650.82	927.11	11,647.55	10,569.60

Names of accounts.	O. E.	June, 1912.	June, 1911.	July 1, 1911. June 30, 1912.	July 1, 1910. June 30, 1911.
All other Yard Expenses	26	481.31	331.02	5,115.87	4,436.80
Opr. Jt. Yd. & Term, Dr.	27				
" " " " " Cr.	28	35.20	.....	458.20	
Rd. Engn-m & Mtrmn	29				
Fuel for Road Locos	30				
Other Rd. Loco. & S. & E.	31	4.15	17.00	169.15	359.30
Road Trainmen	32				
Train Supplies and Expns.	33	12.76	.....	151.76	107.50
Injuries to Persons Trans. Ex.	34	.....	.....	191.50	
Loss and Damage	35	15.00	.....	312.65	139.15
Other Casualties	36	4.62	.....	327.80	1.30
All other Trans. Ex.	37	644.20	546.38	7,273.48	6,723.33
Opr. Jt. Tracks and Facl., Dr.	38				
Opr. Jt. Tracks and Facl., Cr.	39				
Administration	40	1,900.74	2,771.11	48,707.76	39,041.40
Insurance	41	120.00	.....	1,440.00	
Other Gen. Expns.	42	70.35	5.77	614.93	758.11
		$11,338.56	$12,951.50	$168,279.45	$151,448.98
Operating revenue:					
Switching OR	5	21,910.12	24,931.33	233,245.89	233,063.06
Miscellaneous OR	6	101.00	33.25	879.75	537.75
Car Service OR	9	887.00	381.00	7,812.09	446.91
Total Revenue		$22,898.12	$24,583.58	$241,937.73	$234,047.72
Operating Expenses		11,338.56	12,951.50	168,279.45	151,448.98
Net Revenue		$11,559.56	$11,632.08	$73,658.28	$82,598.74

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896 (EXHIBIT 50, REC., P. 717.)

Summary of Shipments Received and Forwarded by Zones.

January 1, 1912, to August 31, 1912, Inclusive.

Zone.	In.	Out.	Total.
Northern	2311	905	3216
Southern	364	78	442
Middle	15045	18227	33272
Miscellaneous	2	14	16
Total	17722	19224	36946

Carload Shipments Received and Forwarded, Northern Zone.

January 1, 1912, to August 31, 1912, Inclusive.

Industry.	In.	Out.	Total.
Bradbury Marble Company	42	16	58
Brueckmann Cooperage Company	37	95	132
Columbia Pretzel & Baking Company	.....	6	6
Consolidated Coal Company	.....	3	3
Coppersmith, M., & Company	.....	18	18
Daniels, Oscar, & Company	16	1	17
Devoy & Kuhn Coal Company	.....	56	56
Eau Claire Branch, St. Louis Lumber Company	606	194	800
Fairbank, The N. K. Company	353	40	393
Fritz, George J., Foundry	19	1	20
Gillespie, R. W.	.....	2	2
Greenspon, Joseph & Son	.....	1	1
Groepper Cooperage Company	15	.....	15
Heibel, P. & Sons	85	2	87
Hill, E. B., & Brother	2	4	6
Independent Coal & Supply Company	246	4	250
Johnson, William C., & Son	4	1	5
Jones & Laughlin Steel Company	199	.....	199
Kacer Manufacturing Company	7	.....	7
Klauber, B., & Sons	44	57	101
Krug Lumber Company	.....	1	1
Kuenzel Manufacturing Company	2	.....	2
Laclede Gas Light Company	150	107	257
Lesser-Goldman Cotton Company	1	1	2
Loy-Lange Box Company	53	1	54
Luehrmann Lumber Company	.....	3	3
Meyer Meinhardt Company	.....	1	1
Murphy, J. P.	.....	1	1
Nelson, N. O., & Company	.....	1	1
Niemeyer Paint Company	2	.....	2
Noelke & Richards	60	.....	60
Northwestern Bottle Company	.....	1	1
897 Notter, John, Boiler Works	11	7	18
Pauly Jail Building Company	43	103	146

Industry.	In.	Out.	Total.
Peterson, L.	.....	1	1
St. Louis Southwestern Railway	80	77	157
St. Louis Rattan Company	1	24	25
Standard Furniture Company	14	12	26
Stute & Company	26	5	31
Schoenberg, F. E.	13	.....	13
Schweitzer & Company	6	1	7
Sample, O. H.	.....	1	1
S. Lumber Company (Luter, La.)	.....	1	1
Staudt & Rueckholdt	.....	5	5
Waldstein Lumber Company	.....	19	19
Western Foundry & Sash Weight Co.	134	29	163
Wolff, D.	.....	1	1
Warner Lumber Company	5	.....	5
Warren Steel Casting Company	11	.....	11
Weber Drayage Company	1	.....	1
Westlake Construction Company	18	.....	18
Wurst, H., & Company	1	.....	1
Remmer, Fred	1	.....	1
Wayne Manufacturing Company	1	1	2
Stecher Cooperage Company	1	.....	1
Scobee, J. F.	1	.....	1
Total	2311	905	3216

Carload Shipments Received and Forwarded, Southern Zone.

January 1, 1912, to August 31, 1912, Inclusive.

Industry.	In.	Out.	Total.
Arnold, The Company	9	.....	9
Belz, J. H. Provision Company	40	9	49
Addis, J. T.	3	.....	3
Busch-Sulzer Brothers-Diesel Engine Company	150	1	151
Cherokee Lumber Company	2	.....	2
Clarksville Cider Company	4	.....	4
Continental Portland Cement Co.	.....	3	3
Ganahl, Fidel Lumber Company	129	58	187
Hunkins-Willis Lime & Cement Co.	2	4	6
Ladenberger Lumber Company	20	.....	20
Medart Manufacturing Company	2	3	5
Urban Atwood Heating Company	3	.....	3
Total	364	78	442
Miscellaneous.			
Reconsigned Cars	.....	3	3
Various	2	11	13
	2	14	16

898 *Carload Shipments Received and Forwarded, Middle Zone.*

January 1, 1912, to August 31, 1912, Inclusive.

Industry.	In.	Out.	Total.
American Land, Timber & Stave Co..	.....	1	1
Anheuser-Busch Brewing Association.	11376	16378	27754
American Brewing Company.....	487	500	987
Bickett Coal Company.....	.....	3	3
Binz Hide & Tallow Company.....	1	.....	1
Bolz-McBride Cooperage Company...	.....	2	2
Brockman, M.	.....	1	1
Busch, Adolphus, Glass Works.....	380	4	384
Carter, William, Lumber Company..	4	.....	4
Central Dry Plate Company.....	13	.....	13
Cohen and Schwartz Iron Company.	.....	12	12
Columbia Brewing Company.....	.....	1	1
Continental Brick Company.....	1	.....	1
C. R. I. & P. Railway.....	.....	1	1
Cramer Dry Plate Company.....	31	4	35
Custer, William, Lumber Company..	.....	1	1
Depot Quartermaster, U. S.....	.....	7	7
D. K. L. W. Co. (Doyle, La.).....	.....	1	1
Ehlermann, Charles H. & M. Co.....	.....	8	8
El. C. S. F. (Brownell, Texas).....	.....	2	2
Faust, E. A.....	1	.....	1
Faust, Harvey Cooperage Company..	.....	3	3
Foundation, The Company.....	.....	1	1
Federal Stave & Lumber Company...	.....	1	1
Fruin-Colnon Construction Company.	7	6	13
Glencoe Lime & Cement Company...	.....	1	1
Gravois Planing Mill Company.....	.....	4	4
Goeke, F. W., & Company.....	.....	11	11
Green, George Lumber Company....	.....	4	4
Graubner, Edward	2	.....	2
Green Tree Brewing Company.....	279	321	600
Gruner, Phil, Lumber Company....	1	.....	1
Hollingshead, J. D.....	.....	1	1
Illinois Central Railroad.....	.....	1	1
Indiana Paper Company.....	1	.....	1
Jackson Lumber Company.....	.....	1	1
Janeff, George	1	.....	1
Jenkins Cooperage Company.....	1	.....	1
Johnes-Mowbry-Nelson Company ...	.....	1	1
Kellermann Contracting Co.			
899 pany	5	3	8
Klauber, A., & Sons.....	2	32	34
Louisiana State Rice Milling Co.....	.....	2	2
Lumaghi Coal Company.....	40	.....	40
Lynn, J. A.....	5	.....	5

Industry.	In.	Out.	Total.
Manufacturers' Railway Company...	186	1	187
Mathes, I. & M., Company.....	1	1	2
Maxson Lumber Company.....	.....	1	1
Meyer Supply Company.....	4	.....	4
Meramec Portland Cement Company.	.....	2	2
Miller, W. A., Elevator Company....	.....	1	1
Morris & Company.....	172	.....	172
National Brewing Company.....	23	17	40
Neumond, K. & E., Company.....	.....	3	3
Hottelet Company of Milwaukee....	.....	3	3
Link Supply Company.....	.....	1	1
Obert Brewing Company.....	215	301	516
Purina Mills	.....	194	194
Saint Louis Basket & Box Co.....	283	174	457
Pennoyer, J. C.....	.....	1	1
Rosenblatt, E.	.....	1	1
Ring, John	.....	1	1
Saint Louis Cooperage Company....	397	156	553
St. Louis Dressed Beef Co.....	54	2	56
St. Louis Refrigerator Car Co.....	289	34	323
Schroeter Coal Company.....	531	.....	531
Schwaner, F. C.....	1	.....	1
Seidel, Julius Lumber Company.....	.....	9	9
Stanley, D. S.	1	.....	1
Swift & Company.....	17	.....	17
Union Brewing Company.....	75	1	76
Union Fuel Company.....	61	.....	61
United States Engineer.....	1	.....	1
Warren, M. W. Coal Company.....	80	.....	80
Wagner Manufacturing Company...	1	.....	1
Webb-Kunze Construction Company.	14	.....	14
Soo Line P. C. Company.....	.....	1	1
United States Reclamation Service...	.....	1	1
Kola Lumber Company, Kola, Miss..	.....	1	1
K. R. C. Lumber Company Alligator, Miss.	.....	1	1
Payton Lumber Company.....	1	.....	1
Total.....	15045	18227	33272

900 (EXHIBIT 54, REC., P. 746.)

Outbound Cars Delivered to St. Louis, Iron Mountain & Southern Railway at 1st Street Yard.

Northern Zone:

Longest haul—(I to B, Blue Print):

1st St. Yard to La Salle Street.....	10,184.8′—1.92	Miles

Shortest haul—(I to C, Blue Print):

1st St. Yard to Louisa Street.....	2,516.0′—0.47	"
Average haul	6,350.4′—1.20	"

Middle Zone:

Longest haul—(I to D, Blue Print):

1st St. Yard to 13th St. Yard.....	4,863.0′—0.95	"

Shortest haul—(I to E, Blue Print):

1st St. Yard to Shipping Yard.....	1,808.0′—0.34	"
Average haul	3,335.5′—0.65	"

Southern Zone:

Longest haul (I to F, Blue Print):

1st St. Yard to Zepp St. Spur.....	5,747.9′—1.08	"

Shortest haul—(I to G, Blue Print):

1st St. Yard to Utah St. Spur.....	4,516.9′—0.85	"
Average haul	5,132.4′—0.97	"
Average for three zones.....	4,939.4′—0.93	"
Average haul for three zones, for cars coming in and returned.....	9,878.0′or 1.87 miles.	

Outbound Deliveries to St. Louis, Iron Mountain & Southern at Their Barton Street Yard.

Northern Zone:

Longest haul—(B to A, Blue Print):

La Salle to Barton Street.....	12,452.9′—2.35	Miles

Shortest haul—(C to A, Blue Print):

Louisa St. to Barton St.....	7,784.1 —1.47	"
Average haul	10,118.5′—1.91	"

Middle Zone:

Longest haul—(D to A, Blue Print):

13th St. Yard to Barton St.....	10,131.1′—1.91	"

Shortest haul—(E to A, Blue Print):

Shipping Yard to Barton St.	7,076.1′—1.34	"
Average haul	8,603.6′—1.62	"

Southern Zone:

Longest haul—(F to A, Blue Print):

Zepp St. to Barton St.	11,016.0′—2.08	"

Shortest haul—(G to A, Blue Print):

Utah St. to Barton St.	9,785.0′—1.85	"
Average haul	10,400.5′—1.96	"
901 Average haul for three zones	9,707.5′—1.83	Miles
Average haul for three zones, for cars coming in and returned	14,646.9′—2.77	"

Inbound Cars from St. Louis, Iron Mountain & Southern Railway.

Northern Zone:

Longest haul—(I to B, Blue Print):

1st St. Yard to La Salle St.	10,184.8′—1.92	Miles

Shortest haul—(I to C, Blue Print):

1st St. Yard to Louisa St.	2,516.0′—0.47	"
Average haul	6,350.4′—1.20	"

Middle Zone:

Longest haul—(I to D, Blue Print):

1st St. Yard to 13th St. Yard	4,863.0′—0.95	"

Shortest haul—(I to E, Blue Print):

1st St. Yard to Shipping Yard	1,808.0′—0.34	"
Average haul	3,335.5′—0.65	"

Southern Zone:

Longest haul—(I to F, Blue Print):

1st St. Yard to Zepp St. Spur	5,747.9′—1.08	"

Shortest haul—(I to G, Blue Print):

1st St. Yard to Utah St. Spur	4,516.9′—0.85	"
Average haul	5,132.4′—0.97	"
Average for three zones	4,939.4′—0.93	"
Average haul for three zones, for cars coming in and returned	14,646.9′—2.77	"

Inbound Cars from Wiggins Ferry Company.

Northern Zone:

Longest haul—(H to B, Blue Print):

Transfer Yard to La Salle St.....	15,982.'—3.02	Miles

Shortest haul—(H to C, Blue Print):

Transfer Yard to Louisa Spur.....	8,468.3'—1.60	"
Average haul	12,225.2'—2.31	"

Middle Zone:

Longest haul—(H to D, Blue Print):

Transfer Yard to 13th St. Yard.....	10,748.3'—2.03	"

Shortest haul—(H to E, Blue Print):

Transfer Yard to Shipping Yard.....	5,693.3'—1.07	"
Average haul	8,220.8'—1.55	"

902 Southern Zone:

Longest haul—(H to F, Blue Print):

Transfer Yard to Zepp St. Spur.....	11,546.2'—2.18	"

Shortest haul—(H to G, Blue Print):

Transfer Yard to Utah St. Spur.....	10,315.2'—1.95	"
Average haul	10,930.7'—2.07	"
Average haul for three zones.....	10,458.9'—1.98	"
Average haul for all three zones, for cars coming in and returned.....	21,603.4'—4.09	Miles

Outbound Deliveries to Wiggins Ferry Company at Lesperance Street.

Northern Zone:

Longest haul—(B to L, Blue Print):

La Salle to Lesperance St.....	17,001.3'—3.22	Miles

Shortest haul—(C to L, Blue Print):

2nd & Louisa to Lesperance St.....	9,487.5'—1.79	"
Average	13,244.8'—2.50	"

Middle Zone:

Longest haul—(D to L, Blue Print):

13th St. to Lesperance St.....	9,767.5'—1.85	"

Shortest haul—(E to L, Blue Print):

Shipping Yard to Lesperance St.....	6,712.5'—1.27	"
Average	8,240.0'—1.56	"

Southern Zone:

Longest haul—(F to L, Blue Print):

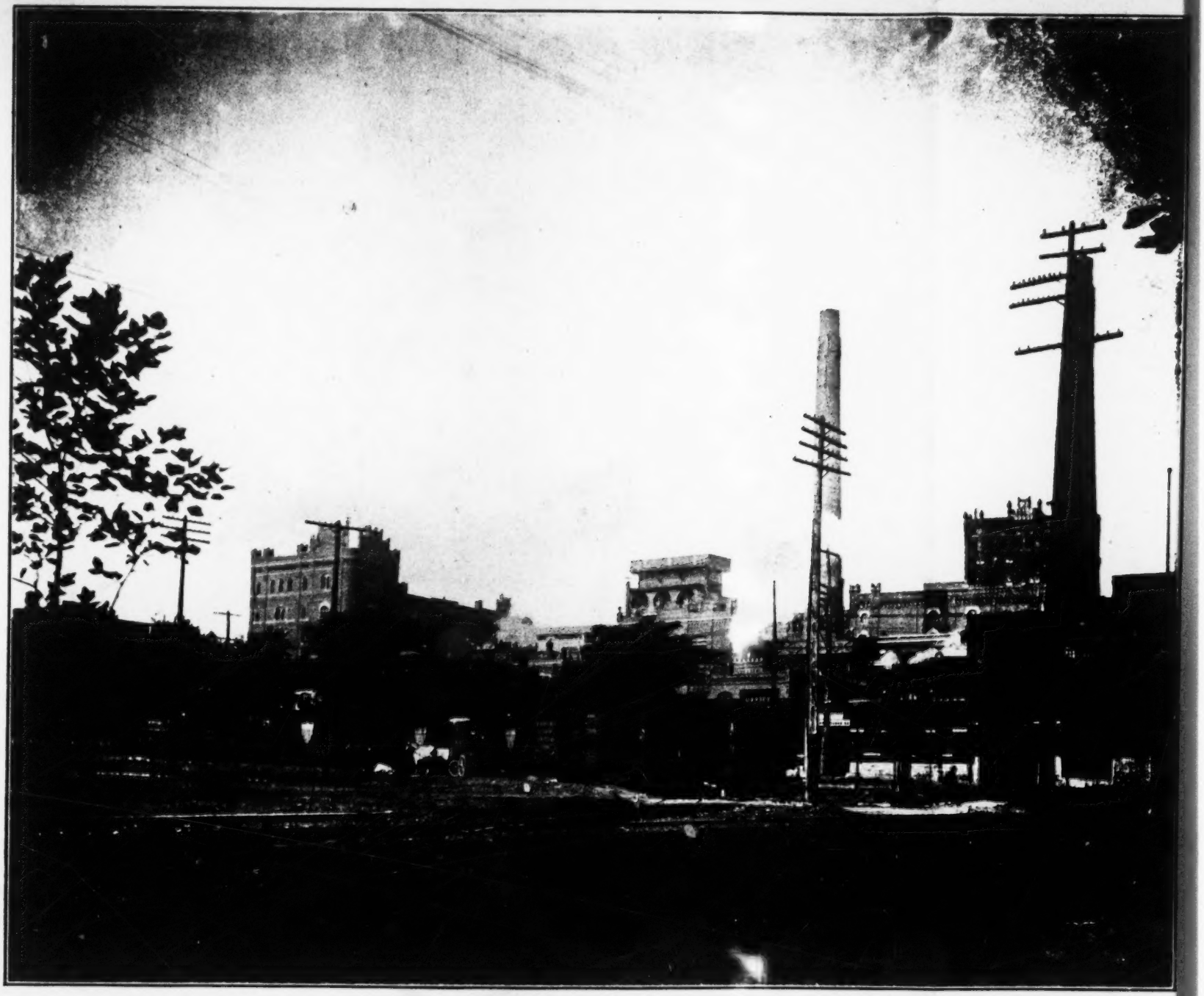
Zepp St. Spur to Lesperance St.....	12,564.4—2.38	"

Shortest haul—(G to L, Blue Print):

Utah St. Spur to Lesperance St.....	11,333.4'—2.14	"
Average	11,948.9'—2.26	"
Average haul for three zones.....	11,144.5'—2.11	"
Average haul for all three zones, for cars coming in and returned.....	21,603.4'—4.09	Miles
Average inbound car movement from Wiggins Ferry Co. and St. Louis, Iron Mountain & Southern R. R.	1.45	Miles
Average outbound car movement to Wiggins Ferry Co. and St. Louis, Iron Mountain & Southern R. R.	1.29	"
Total average car movement for all zones and all connections, including return of empties, which is the average car mileage of all cars handled.....	3.12	"

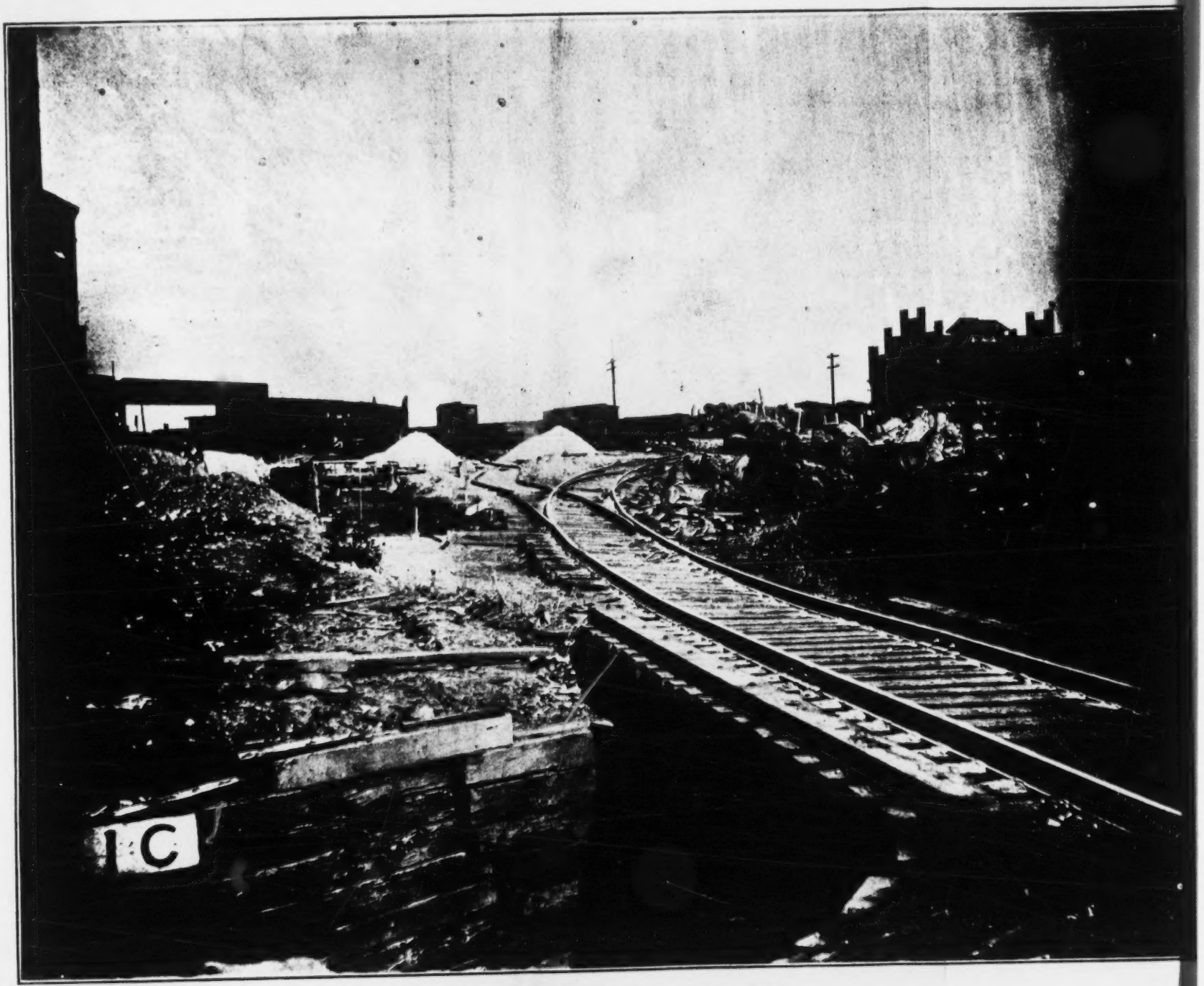
Exclusive of switching in making up trains.

(Here follow photographs marked pages 903 to 906.)



(EXHIBIT 56. SUP. RECORD, p. 781.)

(EXHIBIT 58. SUP. RECORD, p. 783.)



(EXHIBIT 59. SUP. RECORD, p. 784.)

07 (EXHIBIT 60, SUP. RECORD, P. 822.)

Manufacturers' Railway Company.

tatement of Operating Revenue, Operating Expenses, Taxes, Rentals and Interest, and Net Income from Operation—With Averages per Car Handled for Revenue—Year Ended June 30, 1911.

				Average per car.
perating Revenue			$234,047.72	
perating Expenses:				
Maintenance of Way and Structures		$30,836.71		
Maintenance of Equipment		25,225.37		
Traffic Expenses		1,725.91		
Transportation Expenses		53,861.48		
General Expenses		39,799.51		
Total		$151,448.98		$2.4488
axes		6,956.48		.1125
entals:				
Track	$24,000.00			
City Wharf	4,000.00			
Office and Miscellaneous	1,454.99			
		29,454.99		
terest on Operating Capital		6,106.36		.5749
Total			193,966.81	
t Income from Operation				$40,080.91
Cars Handled:				
Interchanged with Connections			52,281	
Intra Works Switching			7,104	
Intra City Switching			167	
Weighing Service			2,294	
Total			* 61,846	

* Averages above shown are figured on this basis.

If to the net income from Operation—$40,080.91—there be added Miscellaneous Other Income (Rent of Buildings) amounting to $1,145.14, the Net Corporate Income of the Company is seen to be $41,226.35. The Investment in Road and Equipment which produced the operating Revenue shown above is $29,342.25. Thus the return earned by the Company upon its investment is 7.4%.

908 (COMPLAINANT'S EXHIBIT No. 62, P. 953.)

Comparative Statement of In and Out Business St. Louis Basket and Box Company.

	1906.		1907.		1908.		1909.		1910.		1911.		1912.	
	In.	Out.	In.	Out.	In.	Out.	In.	Out.	In.	Out.	In.	Out.	In.	Out.
Jan.	..	12	17	13	17	15	..	10	..	11	13	10	..	14
Feb.	..	16	18	15	15	5	1	17	22	15	10	11	..	21
Mch.	..	16	3	18	13	11	31	13	5	25	..	20	12	24
April	..	8	11	16	19	12	..	13	2	19	..	13	32	28
May	..	14	5	13	..	13	..	13	4	22	8	19	106	33
June	..	19	0	19	..	29	..	15	..	30	64	21	45	37
July	..	26	2	13	..	18	..	21	..	23	38	20	21	35
Aug.	..	22	3	19	..	19	..	20	8	28	55	26	26	49
Sept.	..	18	0	11	..	16	..	23	26	32	..	16	..	..
Oct.	..	15	5	16	..	14	..	17	9	24	..	15	..	..
Nov.	..	8	10	6	4	9	..	14	7	13	..	15	..	..
Dec.	..	15	24	6	..	12	3	14	23	14	..	8	..	..
Total	..	189	98	165	68	173	35	190	106	256	188	194	242	244

(Here follow tables marked pages 909 to 911 and photos marked pages 912 to 918.)

TABLE OF GROSS AND NET TON MILE REVENUE WITH RATES, ABSORPTIONS AND M
(PRESENTED AS A

COMMODITY	ORIGIN	DESTINATION	ROUTE
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Memphis	L. & N.—Direct
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"
SOAP	St. Louis, Mo. N. K. Fairbanks Co.	"	"
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Memphis	I. C.—Direct
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"
SOAP	St. Louis, Mo. N. K. Fairbanks & Co.	"	"
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Nashville	L & N.—Direct
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"
SOAP	St. Louis, Mo. N. K. Fairbanks & Co.	"	"
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Nashville	I. C., Martin, Tenn., N. C. & St. L.
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"
SOAP	St. Louis, Mo. N. K. Fairbanks & Co.	"	"
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Birmingham	L. & N.—Direct
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"
SOAP	St. Louis, Mo. N. K. Fairbanks & Co.	"	"
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Birmingham	I. C.—Direct
BRICK	Howard, Mo.	"	"

IMUMS ON FIVE COMMODITIES, ST. LOUIS TO VARIOUS DESTINATIONS ON ST. LOUIS TRUNK LINES RAILS. ALSO TARIFF AUTHORITIES GOVERNING.
EXHIBIT BY MANUFACTURERS RY. CO. IN CASE 3151.) SOUTHERN TERRITORY.

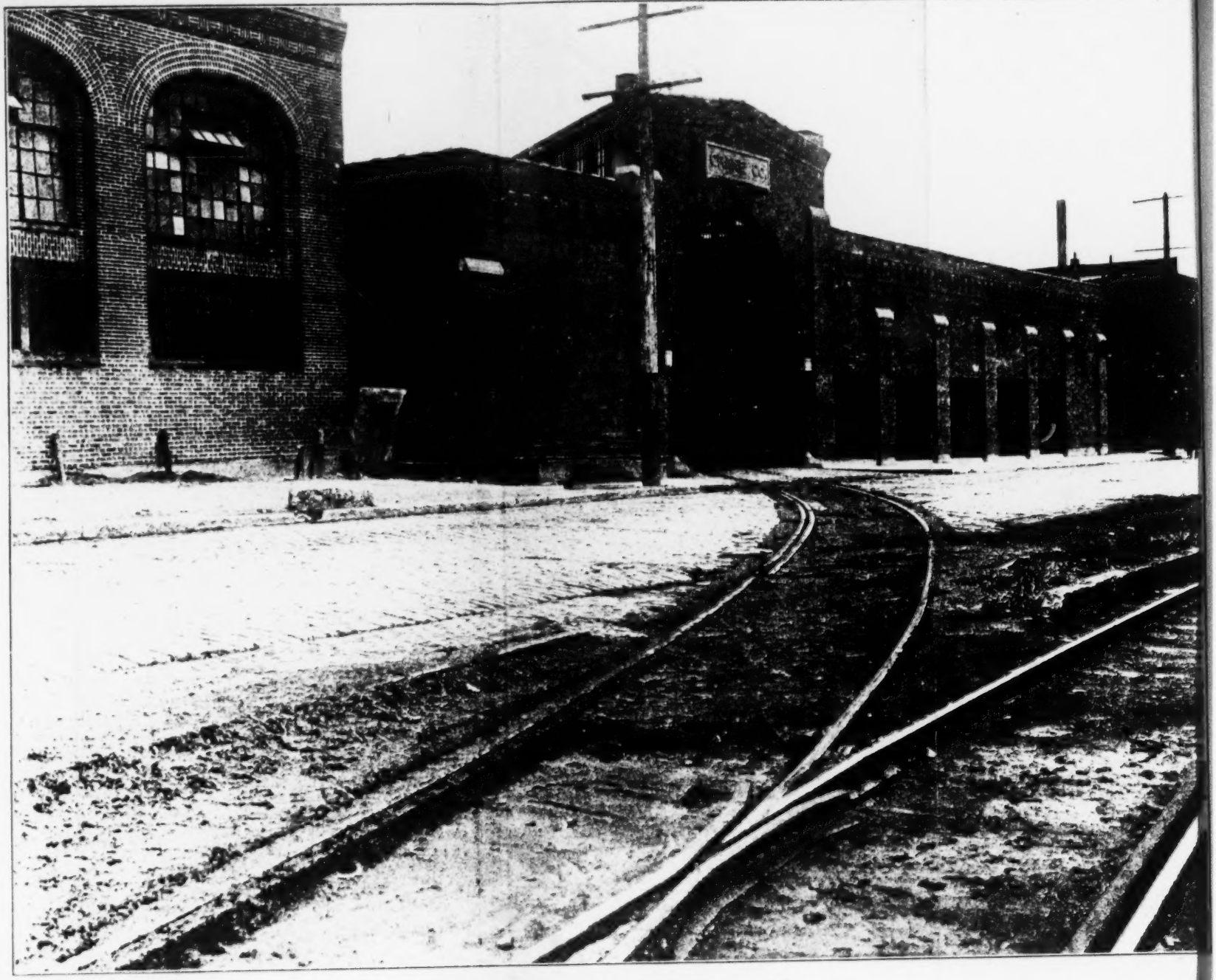
Miles	Min. Wt.	Rate	I. C. C. Auth'y	Gross Revenue	Allowances	I. C. C. Authority	Gross Revenue, Per Ton, Per Mile	Net Revenue, Per Ton, Per Mile	Commodity
487	24000	16	Washburn's 86	$38.40	$11.80	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Memphis	Lelands 924 T. R. R. A. 96 L. & N.—A. 12048	.657	.460	BEER
"	40000	10	" "	40.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Memphis	"	.410	.267	BRICK
"	40000	9	" "	36.00	10.50	3.50 C. B. & Q. 5.00 Transfer 2.00 Memphis	"	.369	.261	CEMENT
"	25000	13	" "	32.50	11.90	6.00 M. P. Ry. 3.90 Transfer 2.00 Memhpis	"	.533	.338	SEWER PIPE
"	30000	13	" "	39.00	11.00	4.50 Mfgr's Ry. 4.50 Transfer 2.00 Memphis	"	.533	.383	SOAP
320	24000	16	Washburn's 86	$38.40	$11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Memphis	"	1.000	.700	BEER
"	40000	10	" "	40.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Memphis	"	.625	.406	BRICK
"	40000	9	" "	36.00	10.50	3.50 C. B. & Q. 5.00 Transfer 2.00 Mamphis	"	.562	.398	CEMENT
"	25000	13	" "	32.50	11.90	6.00 M. P. Ry. 3.90 Transfer 2.00 Memphis	"	.512	.515	SEWER PIPE
"	30000	13	" "	39.00	11.00	4.50 Mfgr's Ry. 4.50 Transfer 2.00 Memphis	"	.512	.583	SOAP
320	24000	21	Washburn's 90	$50.40	$12.50	4.50 Mfgr's Ry. 5.00 Transfer 3.00 Nashville	"	1.319	.986	BEER
"	40000	9	" "	36.00	13.00	8.00 M. P. Ry. 4.00 Transfer 3.00 Nashville	"	.562	.338	BRICK
"	40000	13	" "	52.00	11.50	3.50 C. B. & Q. 5.00 Transfer 3.00 Nashville	"	.812	.632	CEMENT
"	25000	14	" "	35.00	12.90	6.00 M. P. Ry. 3.90 Transfer 3.00 Nashville	"	.875	.552	SEWER PIPE
"	24000	23	" "	55.20	12.00	4.50 Mfgr's Ry. 4.50 Transfer 3.00 Nashville	"	1.430	1.120	SOAP
352	24000	21	Washburn's 90	$50.40	$12.50	4.50 Mfgr's Ry. 5.00 Transfer 3.00 Nashville	"	1.190	.897	BEER
"	40000	9	" "	36.00	13.00	8.00 M. P. Ry. 4.00 Transfer 3.00 Nashville	"	.511	.398	BRICK
"	40000	13	" "	52.00	11.50	3.50 C. B. & Q. 5.00 Transfer 3.00 Nashville	"	.738	.573	CEMENT
"	25000	14	" "	35.00	12.90	6.00 M. P. Ry. 3.90 Transfer 3.00 Nashville	"	.795	.502	SEWER PIPE
"	24000	23	" "	55.20	12.00	4.50 Mfgr's Ry. 4.50 Transfer 3.00 Nashville	"	1.300	1.020	SOAP
527	24000	30½	Washburn's 90	$73.20	$11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Birmingham	"	1.150	.975	BEER
"	40000	15	" "	60.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Birmingham	"	.569	.426	BRICK
"	40000	19	" "	76.00	10.50	3.50 C. B. & Q 5.00 Transfer 2.00 Burmingham	"	.724	.621	CEMENT
"	25000	22	" "	55.00	11.90	6.00 M. P. Ry. 3.90 Transfer 2.00 Birmingham	"	.834	.654	SEWER PIPE
"	24000	28	" "	67.20	11.00	4.50 Mfgr's Ry. 4.50 Transfer 2.00 Birmingham	"	1.060	.888	*SOAP
483	24000	30½	Washburn's 90	$73.20	$11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Birmingham	"	1.260	1.060	BEER
"	40000	15	" "	60.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Birmingham	"	.631	.476	BRICK
"	25000	19	" "	76.00	10.50	3.50 C. B. & Q. 5.00 Transfer	"	.795	.676	CEMENT

TABLE OF GROSS AND NET TON MILE REVENUE WITH RATES, ABSORPTIONS AND MINIMUMS ON FIVE COMMODITIES, ST. LOUIS TO VARIOUS DESTINA

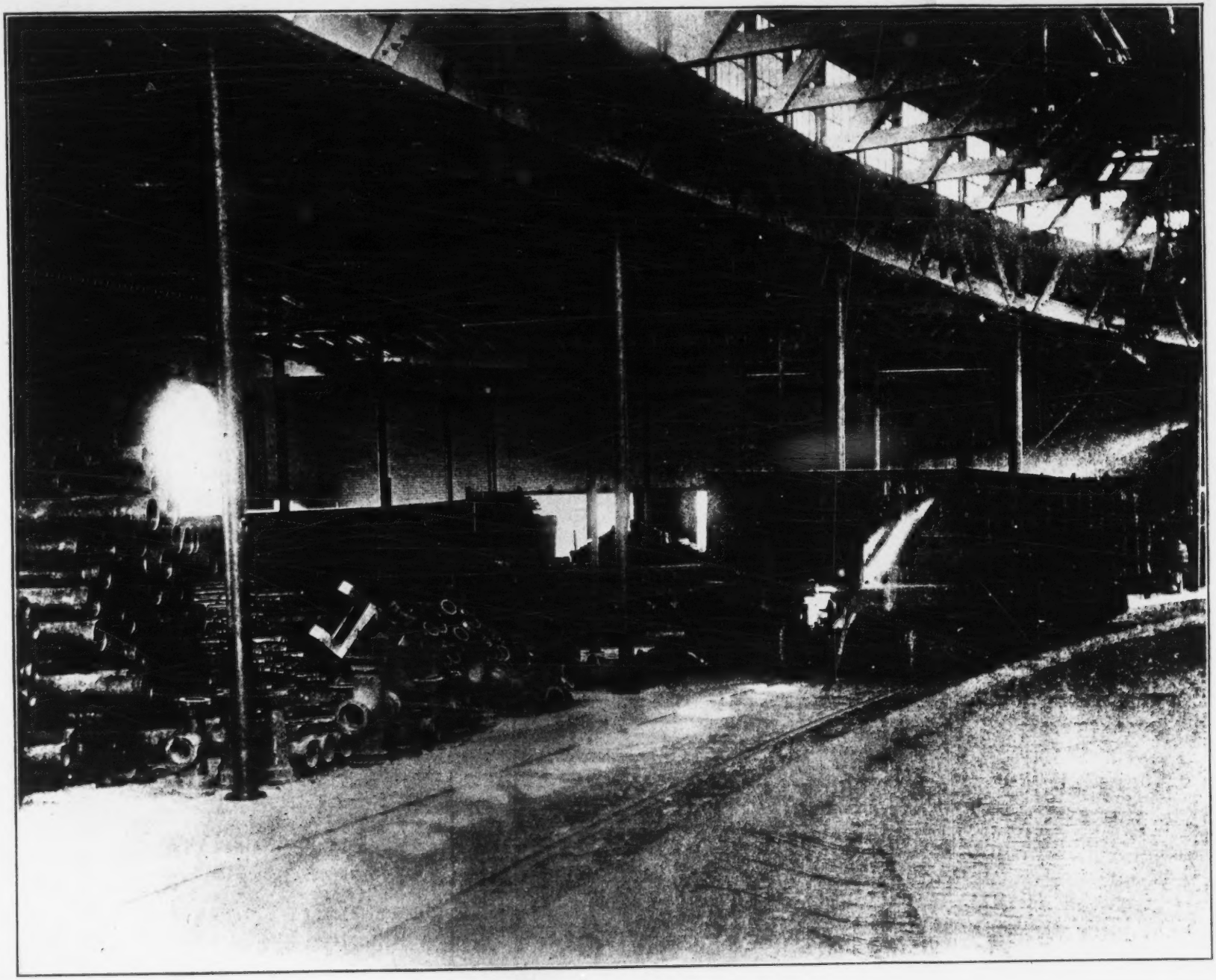
Commodity	Origin	Destination	Route	Mil	Min. Wt.	Rate	I. C. C. Auth'y.	Gross Revenue
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Atlanta	L. & N.—Nashville Tenn.—N. C. & St. L.	608	24000	38	Washburn's 90	$91.20
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	" "	"	40000	16	" "	64.00
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	" "	"	40000	21	" "	84.00
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	" "	"	25000	24	" "	60.00
*SOAP	St. Louis, Mo. N. K. Fairbanks Co.	"	" "	"	24000	35	" "	84.00
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Atlanta	M. & O.—Corinth, Miss. I. C., Birmingham, Ala., Sou.	654	24000	38	Washburn's 90	$91.20
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	" " "	"	40000	16	" "	64.00
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	" " "	"	40000	21	" "	84.00
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	" " "	"	25000	24	" "	60.00
*SOAP	St. Louis, Mo. N. K. Fairbanks & Co.	"	" " "	"	24000	35	" "	84.00
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Yy.	Atlanta	I. C., Martin, Tenn. N. C. & St. L.	640	24000	38	Washburn's 90	$ 91.20
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"	"	40000	16	" "	64.00
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"	"	40000	21	" "	84.00
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"	"	25000	24	" "	60.00
*SOAP	St. Louis, Mo. N. K. Fairbanks & Co.	"	"	"	24000	35	" "	84.00
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Chattanooga, Tenn.	Sou.—Dannville, Ky. C. N. O. & T. P.	588	24000	30½	Washburn's 90	$73.20
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"	"	40000	12	" "	48.00
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"	"	40000	16	" "	64.00
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"	"	25000	22	" "	55.00
*SOAP	St. Louis, Mo. N. K. Fairbanks & Co.	"	"	"	24000	28	" "	67.20
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Chattanooga, Tenn.	I. C.—Martin, Tenn. N. C. & St. L.	503	24000	30½	Washburn's 90	$73.20
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"	"	40000	12	" "	48.00
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"	"	40000	16	" "	64.00
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"	"	25000	22	" "	55.00
*SOAP	St. Louis, Mo. N. K. Fairbanks & Co.	"	"	"	24000	28	" "	67.20
BEER	St. Louis, Mo. A. B. B. A.—Mfgr's Ry.	Selma, Ala.	M. & O., Maplesville, Ala., Sou. Ry.	648	24000	32½	Washburn's 90	$78.00
BRICK	Howard, Mo. Evans & Howard F. B. Co.	"	"	"	40000	19	" "	76.00
CEMENT	Prospect Hill, Mo. St. Louis Portland Cement Co.	"	"	"	40000	19½	" "	78.00
SEWER PIPE	Oak Hill, Mo. Blackmer Post Pipe Co.	"	"	"	25000	23	" "	57.50
*SOAP	St. Louis, Mo.	"	"	"	24000	33		81.36

IMUMS ON FIVE COMMODITIES, ST. LOUIS TO VARIOUS DESTINATIONS BEYOND ST. LOUIS TRUNK LINES RAILS. ALSO TARIFF AUTHORITIES GOVERNING

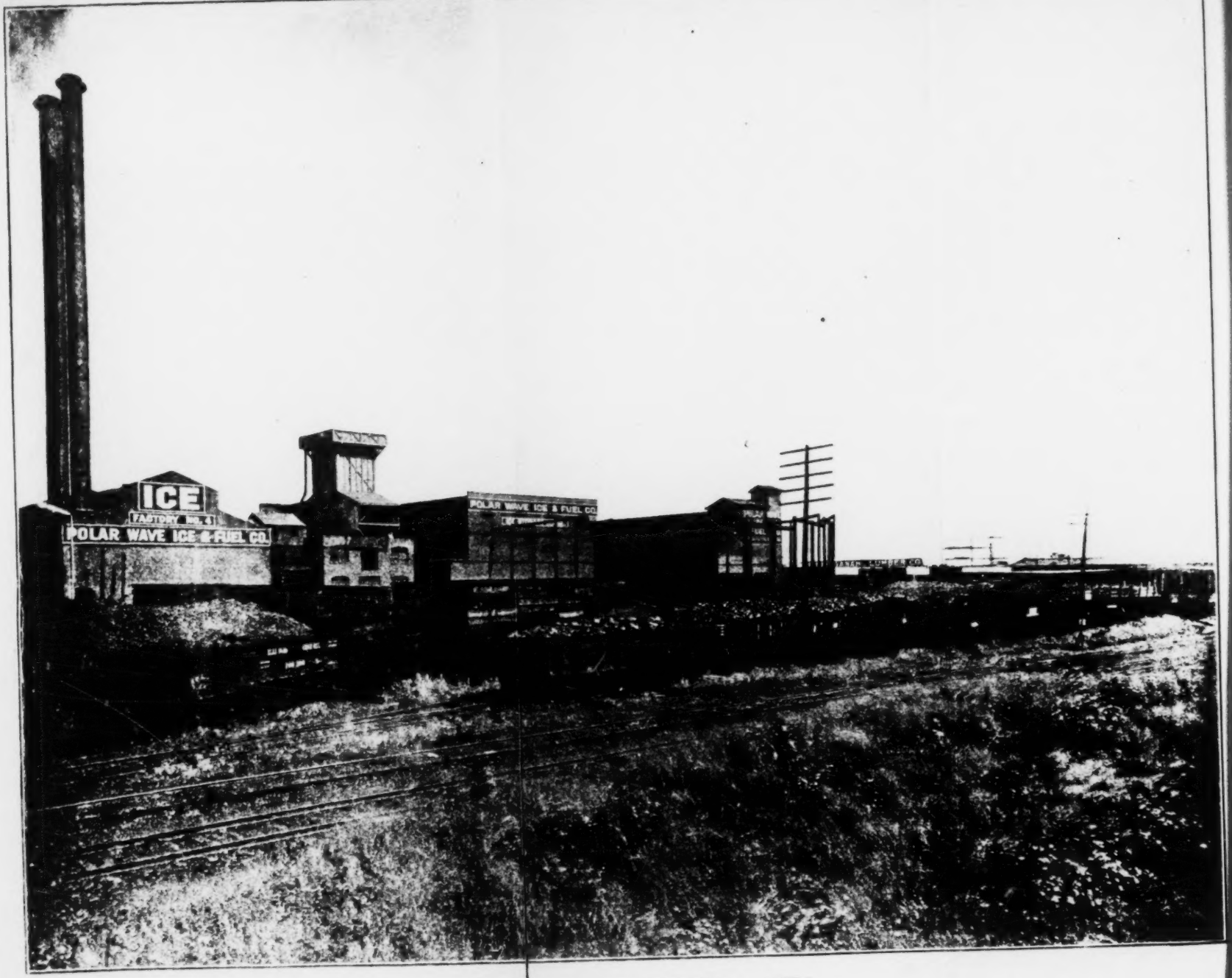
Miles	Min. Wt.	Rate	I. C. C. Auth'y.	Gross Revenue	Allowances	I. C. C. Authority	Gross Revenue, Per Ton, Per Mile	Net Revenue, Per Ton, Per Mile	Commodity
608	24000	38	Washburn's 90	$91.20	11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Atlanta	Leland's 924 T. R. R. A. 96 L. & N.-A. 12048	1.26	1.09	BEER
"	40000	16	" "	64.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Atlanta	"	.526	.411	BRICK
"	40000	21	" "	84.00	10.50	3.50 C. B. & Q. 5.00 Transfer 2.00 Atlanta	"	.690	.604	CEMENT
"	25000	24	" "	60.00	11.90	6.00 M. P. 3.90 Transfer 2.00 Atlanta	"	.789	.632	SEWER PIPE
"	24000	35	" "	84.00	11.00	4.50 Mfg. Ry. 4.50 Transfer 2.00 Atlanta	"	1.15	1.00	*SOAP
654	24000	38	Washburn's 90	$91.20	11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Atlanta	"	1.16	1.01	BEER
"	40000	16	" "	64.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Atlanta	"	.489	.382	BRICK
"	40000	21	" "	84.00	10.50	3.50 C. B. & Q. 5.00 Transfer 2.00 Atlanta	"	.642	.561	CEMENT
"	25000	24	" "	60.00	11.90	6.00 M. P. Ry. 3.90 Transfer 2.00 Atlanta	"	.733	.588	SEWER PIPE
"	24000	35	" "	84.00	11.00	4.50 Mfgr's Ry. 4.50 Transfer 2.00 Atlanta	"	1.07	.930	*SOAP
640	24000	38	Washburn's 90	$ 91.20	11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Atlanta	"	1.18	1.03	BEER
"	40000	16	" "	64.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Atlanta	"	.50	.406	BRICK
"	40000	21	" "	84.00	10.50	3.50 C. B. & Q. 5.00 Transfer 2.00 Atlanta	"	.656	.574	CEMENT
"	25000	24	" "	60.00	11.90	6.00 M. P. Ry. 3.90 Transfer 2.00 Atlanta	"	.750	.602	SEWER PIPE
"	24000	35	" "	84.00	11.00	4.50 Mfgr's Ry. 4.50 Transfer 2.00 Atlanta	"	1.09	.950	*SOAP
585	24000	30½	Washburn's 90	$73.20	11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Chattanooga	Lelands 924 T. R. R. A. 96 N. C. & St. L. 1958-A	1.04	.878	BEER
"	40000	12	" "	48.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Chattanooga	"	.410	.273	BRICK
"	40000	16	" "	64.00	10.50	3.50 C. B. & Q. 5.00 Transfer 2.00 Chattanooga	"	.547	.457	CEMENT
"	25000	22	" "	55.00	11.90	6.00 M. P. Ry. 3.90 Transfer 2.00 Chattanooga	"	.752	.589	SEWER PIPE
"	24000	23	" "	67.20	11.00	4.50 Mfgr's Ry. 4.50 Transfer 2.00 Chattanooga	"	.957	.800	*SOAP
603	24000	30½	Washburn's 90	$73.20	11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Chattanooga	"	1.21	1.02	BEER
"	40000	12	" "	48.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Chattanooga	"	.477	.316	BRICK
"	40000	16	" "	64.00	10.50	3.50 C. B. & Q. 5.00 Transfer 2.00 Chattanooga	"	.636	.532	CEMENT
"	25000	22	" "	55.00	11.90	6.00 M. P. Ry. 3.90 Transfer 2.00 Chattanooga	"	.874	.685	SEWER PIPE
"	24000	33	" "	67.20	11.00	4.50 Mfgr's Ry. 4.50 Transfer 2.00 Chattanooga	"	1.11	.930	*SOAP
645	24000	32½	Washburn's 90	$78.00	11.50	4.50 Mfgr's Ry. 5.00 Transfer 2.00 Selma	Lelands 924 T. R. R. A. 96 L. & N.-A. 12048	1.00	.855	BEER
"	40000	19	" "	76.00	14.00	8.00 M. P. Ry. 4.00 Transfer 2.00 Selma	"	.586	.478	BRICK
"	40000	19½	" "	78.00	10.50	3.50 C. B. & Q. 5.00 Transfer 2.00 Selma	"	.600	.521	CEMENT
"	25000	23	" "	57.50	11.90	6.00 M. P. Ry. 3.90 Transfer 2.00 Selma	"	.709	.561	SEWER PIPE
"	24000	35	"	84.00	11.00	4.50 Mfgr's Ry. 4.50 Transfer 2.00 Selma	"	1.08	.938	*SOAP



(EXHIBIT 66. SUP. RECORD, p. 1005.

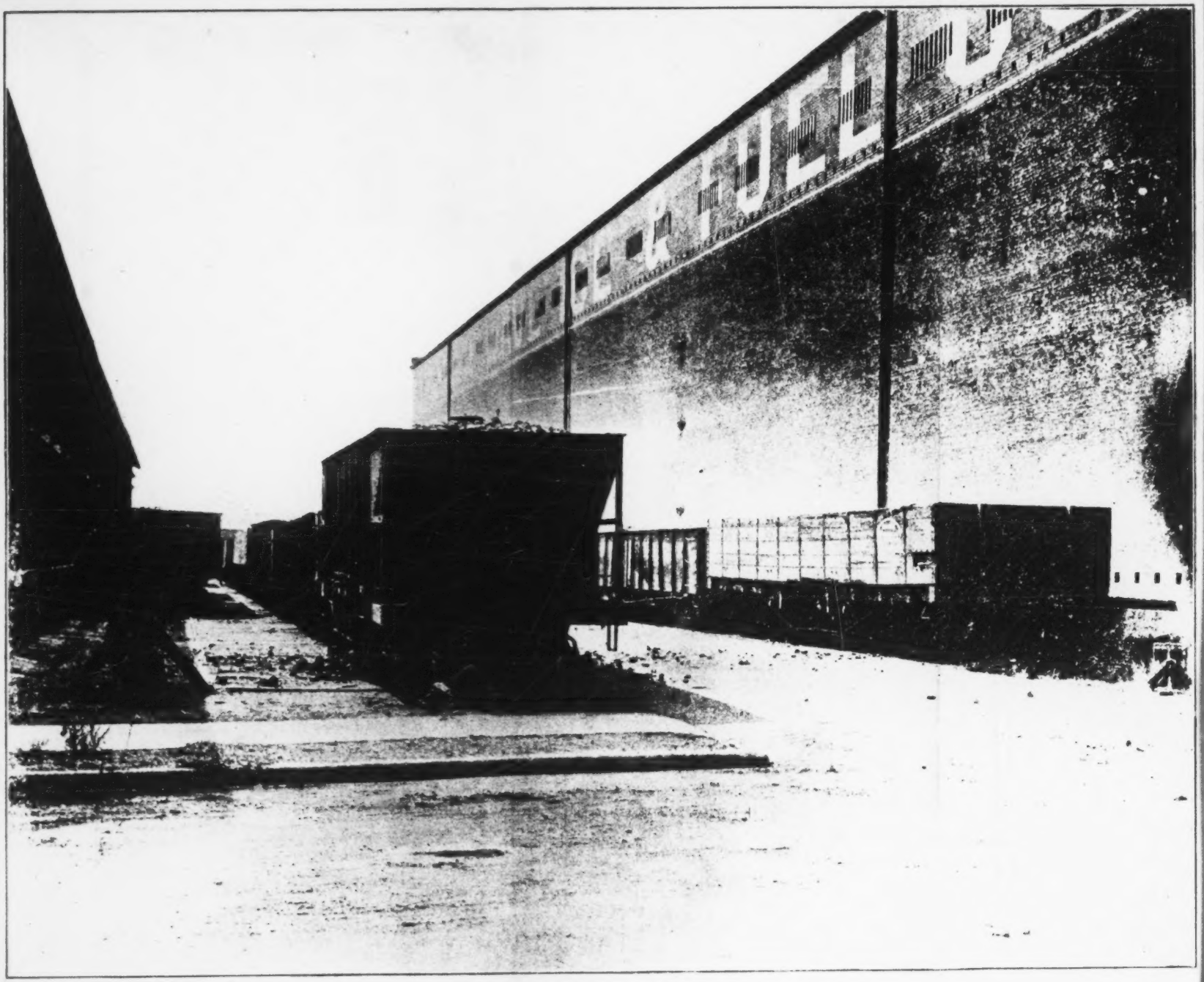


(EXHIBIT 67. SUP. RECORD, p. 1006.)

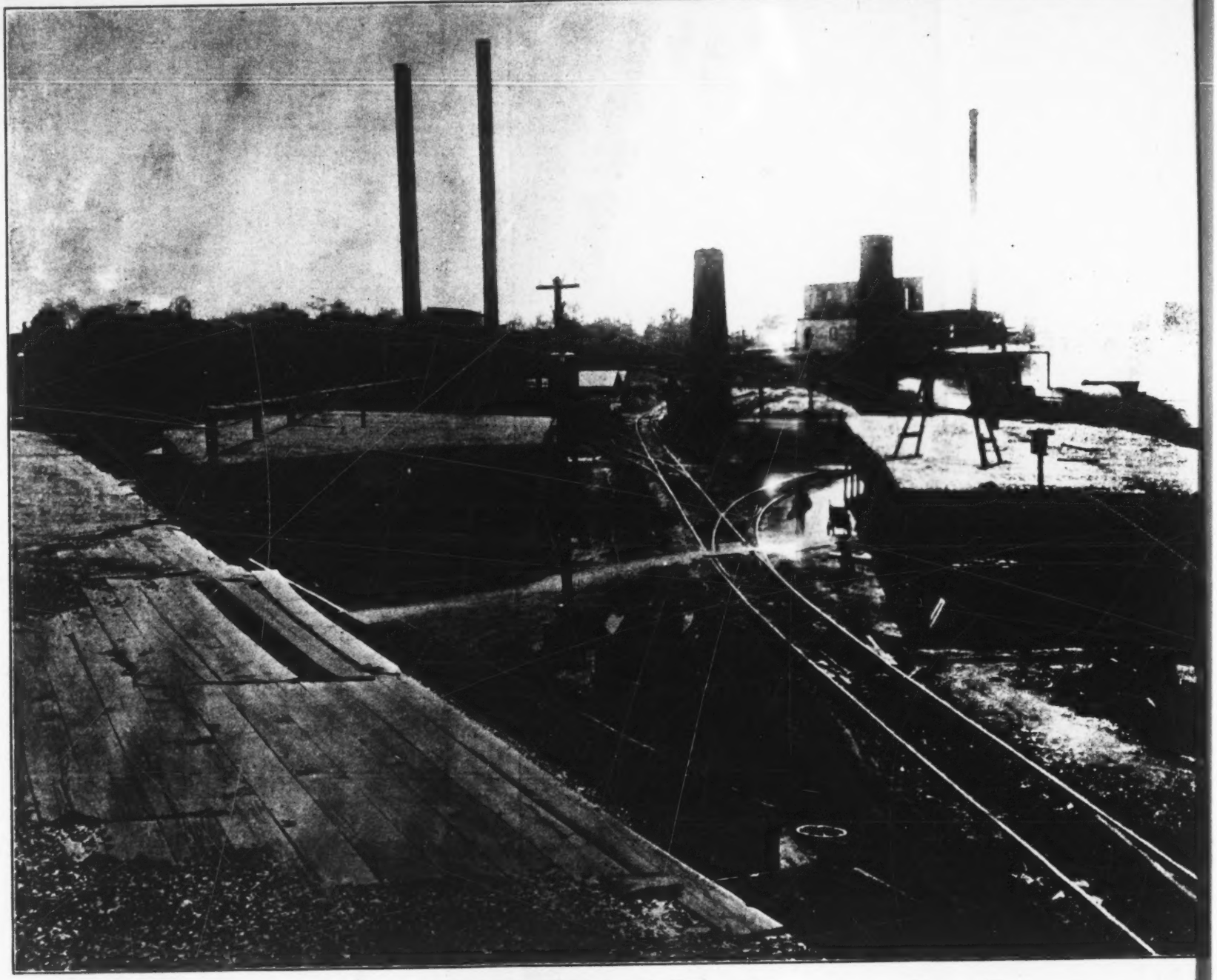


(EXHIBIT 68. SUP. RECORD, p. 1007.)

(EXHIBIT 69. SUP. RECORD, p. 1008.)



(EXHIBIT 70. SUP. RECORD, p. 1009.)



(EXHIBIT 71. SUP. RECORD, p. 1010

(EXHIBIT 72. SUP. RECORD, p. 1011.)

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Exhibit G.W.L. No. /

STATEMENT

SHOWING THAT IF A CARRIER LINE CAR WAS DELIVERED TO THE MANUFACTURERS RAILWAY AT 6:00 A.M. ON A GIVEN DATE, AND THAT COMPANY WERE OPERATING UNDER THE PER DIEM RULE AGREEMENT, AND CAR WAS DELAYED ON THE RAILS OF THE MANUFACTURERS RAILWAY FOR A PERIOD RANGING FROM 1 TO 10 DAYS, WHAT PER DIEM WOULD BE PAID BY THE MANUFACTURERS RAILWAY TO THE OWNER OF THE CAR; THE PER DIEM PAID BY THE DELIVERING CARRIER TO THE MANUFACTURERS RAILWAY UNDER THE 6-DAY PER DIEM RECLAIM IN FORCE IN ST. LOUIS AND EAST ST. LOUIS; AND THE DEMURRAGE CHARGED BY THE MANUFACTURERS RAILWAY TO THE CONSIGNEE AFTER THE EXPIRATION OF THE REGULATION FREE TIME OF 48 HOURS.

IF RETURNED TO CONNECTION	PER DIEM PAID BY MFRS.RY. TO OWNER	PER DIEM RECLAIM ALLOWED MFRS.RY.	DEMURRAGE CHARGED BY MFRS.RY. TO CONSIGNEE	NET AMOUNT ACCRUING TO MFRS RY.
1st day	$ .00	$ 2.10	$ .00	$ 2.10
2nd day	.35	2.10	.00	1.75
3rd day	.70	2.10	1.00	2.40
4th day	1.05	2.10	2.00	3.05
5th day	1.40	2.10	3.00	3.70
6th day	1.75	2.10	4.00	4.35
7th day	2.10	2.10	* 4.00	4.00
8th day	2.45	2.10	5.00	4.65
9th day	2.80	2.10	6.00	5.30
10th day	3.15	2.10	7.00	5.95

* Sunday not counted.

COMMERCE COMMISSION

Exhibit G. W. L. No. 1 a

STATEMENT

SHOWING THE DISTANCES FROM E. ST. LOUIS, ILL., TO VARIOUS OTHER POINTS ON THE L. & N. R. R. AND THE TOTAL ROUND TRIP MILEAGE, WITH THE EARNINGS OF REFRIGERATOR CARS FIGURED ON THE BASES OF 1¢, PER MILE AND 3/4¢ PER MILE.

From East St. Louis to	Mileage on L. & N. R.R. round trip	Mileage on L.H.&St.L. round trip	Mileage on N.C.& St.L. round trip	Total Mileage round trip	Earnings @ 3/4¢ per mile	Earnings @ 1¢ per mile
Cincinnati, O.,	526	286		812	$ 6.09	$ 8.12
Louisville, Ky.,	322	286		608	4.56	6 08
Evansville, Ind.,	322			322	2.42	3.22
Montgomery, Ala.,	1240			1240	9.30	12.40
Memphis, Tenn.,	960			960	7.20	9.60
New Orleans, La.,	1876			1876	14.07	18.76
River Junction, Fla.,	1888			1888	14.16	18.88
Pensacola, Fla.,	1566			1566	11.75	15.66
Atlanta, Ga.,	632		576	1208	9.06	12.08
Lexington, Ky.,	506	286		792	5.94	7.92
Mobile, Ala.,	1598			1598	11.99	15.98
Decatur, Ala.,	874			874	6.56	8.74
Nashville, Tenn.,	632			632	4.74	6.32
Birmingham, Ala.,	1040			1040	7.80	10.40

INTERSTATE COMMERCE COMMISSION

Docket No 3151 Date 9-27-1912

Exhibit No 1-a Witness G W Lamb

Stenographer [illegible]

If a carrier line car was delivered to the Manufacturers Railway at 6 A. M. on a given date, and that Company were operating under the per diem rule agreement, and car was delayed on the rails of the Manufacturers Railway for a period ranging from one to ten days, the following is an Exhibit of the per diem paid by the Manufacturers Railway to the owner of the car; the per diem paid by the delivering carrier to the Manufacturers Railway under the six day reclaim in force at St. Louis and East St. Louis, and the demurrage charged by the Manufacturers Railway to the consignee after the expiration of the regulations free time of forty-eight hours.....

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If returned To Connection	Per diem paid by Manufacturers Railway to Owner.	Per diem Reclaim allowed Manufacturers R'y.	Demurrage charged by Manufacturers R'y to consignee.	Net amount accruing to Manufacturers Railway.
1STday Mon.	0	$2.10	0	$2.10
2NDday Tues.	.35	2.10	0	1.75
3RDday Wed.	.70	2.10	$1.00	2.40
4THday Thurs.	1.05	2.10	2.00	3.05
5THday Fri.	1.40	2.10	3.00	3.70
6THday Sat.	1.75	2.10	4.00	4.35
7THday Sun.	2.10	2.10	4.00	4.00
8THday Mon.	2.45	2.10	5.00	4.65
9THday Tues.	2.80	2.10	6.00	5.30
10THday Wed.	3.15	2.10	7.00	5.95

INTERSTATE COMMERCE COMMISSION
Docket No 3151
Compt
Exhibit No. 1
Stenographer WJ.
Date 9/27/12
Witness
Roach

919 I, W. W. Nall, Clerk of the United States District Court for Eastern Division of Eastern Judicial District of Missouri, hereby certify that the exhibit hereto attached is the original exhibit abstract of evidence of Supplemental Hearings, Docket 3151 Interstate Commerce Commission filed in Causes No-. 4384-4385 of Manufacturers' Railway Company, et al., versus United States of America, et al., in said Court, which (under order of the District Court) is transmitted to the Clerk of the Supreme Court as a part of the transcript and record upon appeal in said cause certified as of this date.

Witness my hand and the seal of said Court, this 25th day of May, A. D. 1915.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled May 25, 1915. W. W. Nall, Clerk.]

(Here follow tables marked pages 920 to 925.)

926 Interstate Commerce Commission. Docket No. 3151. Exhibit No. 21. Witness, —— ——. Complainants, —— ——. Date 5-2-1910. Steno., Flannery.

Copy of Lease.

Anheuser-Busch Brewing Association to Manufacturers Railway Company.

This Indenture, made the 21st day of April, 1887, between the Anheuser-Busch Brewing Association of St. Louis, Missouri, of the one part and the Manufacturers' Railway Company of the same place party of the second part, Witnesseth: That said first party in consideration of the rent, covenants and agreements hereinafter mentioned and reserved on the part of second party its successors and assigns has leased and by these presents does lease to the said second party the right of way over and across;

1st. Lot 3 in Block 883 of the City of St. Louis, fronting twenty-five feet on east line of Eighth Street and running back of that width to an alley.

2nd. Commencing at a point in the East line of Broadway, 7 feet north of where the track as now laid intersects the said East line, thence South 28 feet, thence Eastwardly parallel with track now laid through City Blocks 2020, 2019, 2018 and part of 2017 on a curve line with radius of 3416.87 feet to a point distant 275 feet 6 and one-half inches north of the south line of Dorcas Str. at right angles to said Street and 225 feet more or less from the East of the east line of 2nd Street, thence through City Block 2016 eastwardly and parallel with Dorcas Street and distant 275 feet 6 and one-half inches for a distant- of 345 feet thence through City Blocks 2015 and 2014 S. E. on a curve line of 472 feet radius, a distance of 495 feet more or less, thence through City Block 2014 S. E. on a curve line of 454 feet radius to where same intersects the west line of the St. Louis Iron Mountain & Southern Railway Company right of way, thence north on the west line of the right of way of the St. Louis Iron Mountain & Southern Railway to a point where a line parallel to the above last described curved line and distant 28 feet parallel therefrom intersects the same, thence northwest on a line parallel to the above described line and distant 28 feet to the east line of Broadway. Excepting such Streets and alley crossed by above description, for the term of ninety-nine years from the date hereof at the yearly rent of Fifteen hundred Dollars payable quarterly on 21st days of each and every July, October, January and April during said term. At the end of the term hereby created said strips and lots of land are to be surrendered to first party with all Roadbeds, Tracks, Ties and other improvements placed thereon, and first party being the owner of a certain leasehold of several lots and parcels of ground in Block 884 of said City, does hereby in consideration of the rent above reserved and the sum of One Dollar to them paid sublet to second party lots three and twenty-three in said Block, the first fronting twenty-five feet on the east line of 7th Street and the other

twenty-five feet on the west line of Broadway, for the term of six years and ten months from May 1st, 1887, and renewable for four successive terms of 10 years each if first party shall obtain such renewals from the owner, as provided for in the original lease to A. Busch, which is recorded in Book 723 page 292.

At the end of said term the rent shall be at the same rate as the first party shall be compelled to pay to owner as rent for said parcels so hereby sublet under the terms of renewal clause of said lease from Lessor.

Said lessee takes this sub-lease subject to perform all conditions of original lease, save and expect as to payment of rents and Taxes for first term.

In Witness Whereof the parties have executed these presents in duplicate.

ANHEUSER BUSCH BREWING ASSOCIATION,
(Signed) By ADOLPHUS BUSCH, *President.*

MANUFACTURERS' RAILWAY COMPANY.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

928 Interstate Commerce Commission. Docket No. 3151. Exhibit No. 22. Witness —— ——. Complainants, —— ——. Date 5-2-1910. Steno., Flannery.

This agreement, Made and entered into this 31st day of December, 1908, by and between the Anheuser-Busch Brewing Association, a corporation of St. Louis, Missouri, Hereinafter referred to as the "Association," part- of the first part, and the Manufacturers' Railway Company, a corporation of said City of St. Louis, Missouri, hereinafter referred to as the "Railway," party of the second part, Witnesseth:

That in consideration of the rents herein reserved and agreed to be paid by the Railway, said Association hereby leases to said Railway, for a period of ten (10) years from January 1st, 1909, for railway and right of way purposes, all the land situated between Dorcas Street on the north, First Street on the east, Arsenal Street on the south, and Thirteenth Street on the west, in the said City of St. Louis, whereon it has laid and in operation certain railway tracks, excluding therefrom certain strips of land on which said Association owns side tracks for the purposes of its business, commonly known as "sidings," the lands hereby leased, together with the side tracks or sidings, being shown in detail on a blue print hereto attached and made part hereof, reserving unto itself as a rental therefor the sum of Two Thousand Dollars (2,000.00) per month, payable in advance.

Said Association further gives and grants to said Railway the right and privilege to use and operate the aforesaid sidings, for railway purposes, upon conditions, however, that such use will never

interfere with the reasonable use thereof by said Association, of which said Association shall be the sole and only judge. In consideration of the foregoing privileges to use said sidings, said Railway agrees and covenants to and with said Association, to maintain the same and keep them in constant order and repair, at its sole cost and expense. Said Association further agrees to pay the taxes imposed upon the lands hereby leased.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

927 Said Railway Company agrees to pay the rent above reserved, when due and payable, and in all respects whatsoever to comply with the terms and conditions of this lease, and that a failure on its part so to do, shall and will authorize said Association to terminate this lease.

Executed in duplicate the day and year first above written.

ANHEUSER BUSCH BREWING ASSOCIATION,

(Signed) By AUG. A. BUSCH, *Vice-President.*

Attest:

(Signed) ROBT. HOLM, *Secretary.*

MANUFACTURERS' RAILWAY COMPANY,

(Signed) By G. F. MOORE, *President.*

Attest:

(Signed) OTTO H. RASSFELD, *Secretary.*

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

930 Interstate Commerce Commission. Docket No. 3151. Exhibit No. 23. Witness, Moore. Complainants, —— ——. Date 5-2-1910. Steno., Flannery.

This agreement made and entered into this 16th day of April, A. D. 1888, by and between the Manufacturers' Railway Company, a Corporation of the State of Missouri, and the St. Louis, Iron Mountain & Southern Railway Company, a corporation of the State of Missouri, party of the Second part witnesseth:

First. The said Manufactuers' Railway Company, party of the first part, for and in consideration of the sum of one dollar to it paid by the St. Louis, Iron Mountain & Southern Railway Company, receipt of which is hereby acknowledged, and the further considerations hereafter mentioned, does by these presents grant to the St. Louis, Iron Mountain & Southern Railway Company, party of the Second part, for the term of ten (10) years from the date hereof, the sole and exclusive right and privilege to operate as hereinafter set forth, the Railway owned, and the tracks and switches now constructed and owned, and which may hereafter be constructed and added to its

present system by said party of the first part, upon a certain tract of land situated between Arsenal and Dorcas Streets, and between the Brewery of the Anheuser Busch Brewing Association, and the main tracks of the St. Louis, Iron Mountain & Southern Railway Company, in the City of St. Louis, State of Missouri.

Second. Said party of the first part further agrees that it will pay all taxes which may be assessed upon its Railway side tracks and switches; that it will keep and maintain in good condition for operating all its said main tracks, side tracks and switches; and maintain good and sufficient safety gates at the Street Crossings on the line of its said Railway; and provide good and competent switchmen at each of the street crossings on said line of Railway; and to keep up and repair said street crossings; and in every way comply with the stipulations contained in Ordinance No. 13998 of the City of St. Louis, and any and all other Ordinances or laws now in force, or which may hereafter be enacted, which may affect said Railway or any of its tracks and switches. And the said first party hereby agrees to hold said second party harmless from any and all claims for damages arising from any failure or neglect on its part to keep and perform any and all of the obligations of this agreement to be by it performed.

Third. Said party of the second part undertakes and agrees, during said term of ten years, to so operate said Railway of said party of the first part; and to that end to furnish all power and other means necessary, and not herein assumed by said first party, and at rates to be agreed upon from time to time, to provide all the facilities for carrying, hauling and switching, which said party of the first part may within the purpose of its Organization desire done, or which the said party of the first part may by law be required to provide. And said party of the second part more particularly agrees and undertakes to carry, haul or switch with absolute promptness, and dispatch all freight cars which may be intended for the Anheuser Busch Brewing Association, any of its tenants or anyone else now or hereafter connected by switch or side tracks with the tracks of said party of the first part within said District; to deliver such cars or freight upon the switches or side tracks of the parties for whom the said may be so intended; and in all instances to utilize all switches and side tracks now built or which may hereafter be constructed

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

929 within the territory covered by this agreement exclusively for the business of the owners of such switches and side tracks respectively; and in no event to permit other cars or rolling stock of any kind to be left standing on the same;

And the said second party shall be paid for ssuch services at such rates as may be from time to time agreed upon.

Provided: That nothing in the Agreement shall be construed, as giving to the said Manufacturers Railway Company the right to buy any tracks or switches upon certain tracts of land, the property of the Anheuser Busch Brewing Association lying between Second

Street and the Mississippi River and between Arsenal Street and Dorcas Street, which have been leased by the said Anheuser Busch Brewing Association to the said St. Louis Iron Mountain & Southern Railway Company by a certain lease of even date herewith, nor shall this Agreement be construed as in any manner prohibiting said St. Louis Iron Mountain & Southern Railway Company from laying any track or tracks on the grounds so leased, or as prohibiting the St. Louis Iron Mountain & Southern Railway Company from connecting said tracks with the main tracks of the said Manufacturers Railway.

Fourth. The party of the second part further agrees that any failure on its part to comply with the terms and conditions of this Agreement, shall terminate and avoid the same at the option of the first part.

Fifth. This agreement shall not be assigned without the written assent of the said party of the first part, first had and obtained thereto, and the said party of the second part agrees to peaceably deliver up to said party of the first part or to its successors and assigns at the termination of this Agreement, by forfeiture or otherwise, the property herein described.

In Witness Whereof the said parties have caused their respective President and Vice President to sign these presesnts, and their respective Secretaries to affix their seals to the same in duplicate the day and year first above mentioned.

MANUFACTURERS' RAILWAY COMPANY.

(Signed) —— ——, *President.*

Attest:

MANUFACTURERS' RAILWAY COMPANY.

(Signed) —— ——, *Secretary.*

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.

(Signed) —— ——, *Vice-President.*

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.

(Signed) —— ——, *Secretary.*

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

932 This agreement, made and entered into this 30th day of August, A. D. 1902, by and between the Manufacturers' Railway Company, a corporation of the State of Missouri, party of the first part, and the St. Louis, Iron Mountain & Southern Railway Company, a corporation of the State of Missouri, party of the second part,

Witnesseth: That, whereas, heretofore, on the 17th of April, 1898, an agreement was entered into by and between the said parties, which agreement is made a part hereof; and

Whereas, it is now proposed by the said party of the first part to construct an additional railroad track, diverging from said first party's Main track, at a point 100 feet, more or less, North of the

point where said first party's Main track connects with said second party's "Arsenal Siding," and thence running Northwardly, on the west side of and parallel to said "Arsenal Siding" and across Dorcas Street, to a point 40 feet, more or less, North of the North line of Dorcas Street, where it is to connect with a track to be laid and owned by said second party, as indicated on the blue print hereto attached, marked "Exhibit A," and made a part hereof; and

Whereas, said railroad track so constructed is to be a part of the now existing system of the Manufacturers' Railway Company, and it is proposed to have the system so extended and in all respects operated by the St. Louis, Iron Mountain & Southern Railway Company, as is expressed in said contract of April 17, 1898;

Now, therefore, in consideration of the premises and the sum of one dollar by each party to the other paid, and in consideration of the mutual advantages to be derived from the making of this agreement, it is agreed as follows, to-wit:

First. Said Manufacturers' Railway Company undertakes and

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

agrees, provided it can obtain the consent of the City, to cross Dorcas Street, and the consent of the Anheuser-
931 Busch Brewing Association to cross its land, to construct within six (6) months from this date a railway track between the termini and along the route hereinabove indicated, practically as set out upon the map which is hereto attached. If and when said track is so constructed, it shall to all intents and purposes become a part of the present system of the Manufacturers' Railway Company; and the said first and second parties, with respect to said new track, shall respectively assume the duties and obligations and enjoy all the privileges and rights which are set out in said original contract as completely, to all intents and purposes, as if said new track had been a part of the system of the Manufacturers' Railway Company at the time of the making of said original contract. This contract shall be and remain in force for the unexpired period of said original contract of April 17th, 1898, subject to all the conditions and provisions in said contract set forth.

Second. If said Manufacturers' Railway Company does not build or construct said track as hereinabove provided for, within the period of time stated, then this agreement shall for all purposes be null and void.

In witness whereof, the said parties have caused their respective President and Third Vice-President and General Manager to sign these premises.

MANUFACTURERS' RAILWAY COMPANY,

(Signed) By J. F. VICTOR, *Superintendent.*

(Signed) OTTO H. RASSFELD, *Secretary.*

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.,

(Signed) By RUSSELL HARDING,
3rd Vice-President and General Manager.

Approved as to form:
(Signed) MARTIN L. CLARDY,
B. C., General Attorney St. L., I. M. & S. Ry. C

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

934 Interstate Commerce Commission. Docket No. 3151. E hibit No. 24. Witness, Moore. Complainants, —— — Date 5-2-1910. Steno., Flannery.

This agreement, made and entered into this 17th day of Apr A. D. 1898, by and between the Manufacturers' Railway Compan a corporation of the State of Missouri, party of the first part, and t St. Louis, Iron Mountain and Southern Railway Company, a co poration of the State of Missouri, party of the second Part,

Witnesseth: First. The said Manufacturers' Railway Compan party of the first part, for and in consideration of the sum of o dollar to it paid by the St. Louis, Iron Mountain and Southern Ra way Company, receipt of which is hereby acknowledged, and the fu ther consideration hereinafter mentioned, does by these presen grant to the St. Louis, Iron Mountain & Southern Railway Compan party of the second part, for the term of ten (10) years from th date hereof, the sole and exclusive right and privilege to operate hereinafter set forth, the Railway owned, and the tracks and switche now constructed and owned, and which may hereafter be construct and added to its present system by said party of the first part, upo a certain tract of land situated between Arsenal and Dorcas Stree and between the Brewery of the Anheuser-Busch Brewing Associa tion and the main tracks of the St. Louis, Iron Mountain & Souther Railway Company in the City of St. Louis, State of Missouri.

Second. Said party of the first part further agrees that it will pa all taxes which may be assessed upon its railway, side tracks an switches; that it will keep and maintain in good condition for oper ating all its said main tracks, side tracks and switches; and main tain good and sufficient safety gates at the street crossings on th line of its said Railway; and provide good and competent watchme at each of the street crossings on said line of Railway; and to kee up and repair said street crossings; and in every way to comply wit the conditions and stipulations contained in Ordinance No. 13,99 of the City of St. Louis, and any and all other ordinances or law now in force, or which may hereafter be enacted, which may affec said Railway, or any of its tracks or switches. And the said firs party hereby agrees to hold said second party harmless from an and all claims for damages arising from any failure or neglect o part of the said party of the first part to keep and perform any an all of the obligations of this agreement to be by it performed.

Third. Said party of the second part undertakes and agrees dur ing said term of ten years to so operate said Railway of said party o the first part; and to that end to furnish all power and other means necessary, and not herein assumed by said first party, and at the ne

rates which are now in force and which have been in effect since February 1st, 1898, to provide all the facilities for carrying, hauling and switching, which said party of the first part may within the purpose of its organization desire done, or which said party of the first part may by law be required to provide. And said party of the second part more particularly agrees and undertakes to carry, haul or switch with absolute promptness and dispatch all freight cars, which may be intended for the Anheuser-Busch Brewing Association, any of its tenants or any one else now or hereafter connected by switch or side tracks with the tracks of said party of the first part, within said District; to deliver such cars or freight upon the switches or side tracks of the parties for whom the same may be so intended; and in all instances to utilize all switches and side tracks now
933 built or which may hereafter be constructed within the territory covered by this agreement, exclusively for the business of the owners of such switches and side tracks respectively; and in no event to permit other cars or rolling stock of any kind to be left standing on the same.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

And the said second party shall be paid for such services at such net rates as are now in force, according to the agreement which went into effect February 1st, 1898.

Provided: That nothing in the agreement shall be construed as giving to the said Manufacturers' Railway Company the right to lay any tracks or switches upon a certain tract of land, the property of the Anheuser-Busch Brewing Association, lying between the St. Louis Transfer Company and the Mississippi River and between Arsenal Street and Dorcas Street, which has been leased by the said Anheuser-Busch Brewing Association to the said St. Louis, Iron Mountain & Southern Railway Company by a certain lease of even date herewith, nor shall this agreement be construed as in any manner prohibiting said St. Louis, Iron Mountain & Southern Railway Company from laying any track or tracks on the ground so leased, and from maintaining the same during the term of this agreement, or as prohibiting said St. Louis, Iron Mountain & Southern Railway Company from connecting said tracks with the main tracks of the said Manufacturers' Railway for and during said term.

Fourth. The party of the second part further agrees that any failure on its part to comply with the terms and conditions of this agreement shall terminate and void the same at the option of the party of the first part.

Fifth. This agreement shall not be assigned without the written assent of the said party of the first part, first had and obtained thereto; and the said party of the second part agrees to peaceably deliver up to said party of the first part, or to its successors and assigns at the termination of this agreement, by forfeiture or otherwise, the property herein described.

In Witness Whereof, the said parties have caused their respective President and General Manager to sign these presents; and their re-

spective Secretaries to affix their seals to the same, in duplicate, th day and year first above written.

MANUFACTURERS' RAILWAY COMPANY,
(Signed) By ADOLPHUS BUSCH, *President.*

Attest:
(Sgd.) OTTO H. RASSFELD, *Secretary.*

[SEAL.] THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
(Signed) By W. B. DODDRIDGE, *General Manager.*

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

935 *Statement of Cars Handled for* $2.00 *Revenue.*

Fiscal Year Ending June 30, 1911.

	Forwarded.		Received.		Totals, out & in.		Gran tota
	A.B.B.A.	Misc'l.	A.B.B.A.	Misc'l.	A.B.B.A.	Misc'l.	
July, 1910.....	179	57	44	129	223	186	40
Aug., "	167	67	42	171	209	238	44
Sept., "	131	66	28	135	159	201	36
Oct., "	112	161	29	152	141	313	45
Nov., "	69	330	85	199	154	529	68
Dec., "	86	269	54	104	140	373	51
Jan., 1911.....	78	229	67	107	145	336	48
Feb., "	62	68	46	117	108	185	29
Mar., "	61	34	63	132	124	166	29
Apr., "	67	43	70	131	137	174	31
May., "	108	43	96	131	204	174	37
June, "	247	59	110	130	357	189	54
Totals.....	1367	1426	734	1638	2101	3064	516

Interstate Commerce Commission. Exhibit No. 43. Docket No. 3151. Witness, Moore. Date 1-16-12. Complainant —— ——. Stenographer, Philips.

(Here follow tables marked pages 936 to 938.)

CARLOAD STATEMENT.

MARCH 1911 - DECEMBER 1911

NORTHERN ZONE.

NAME	OUTBOUND	INBOUND	TOTAL
CANNON LUMBER & BOX COMPANY		8	8
N. K. FAIRBANK COMPANY	31	342	373
P. HEIBEL & SONS	4	94	98
INDEPENDENT COAL & SUPPLY CO.		230	230
BRADBURY MARBLE COMPANY	25	68	93
B. KLAUBER'S SONS JUNK CO.	70	40	110
JNO NOOTER BOILER WORKS	18	9	27
PAULY JAIL BUILDING COMPANY	103		103
ST. LOUIS RATTAN COMPANY	47	3	50
STAR STATE LUMBER COMPANY		7	7
WESTERN FOUNDRY & SASH WT. CO.	29	184	213
ROBERT B. BROWN OIL CO.	12		12
GEO. J. FRITZ FDY. & MACH. CO.		15	15
LOY LANGE BOX COMPANY	3	23	26
SHULTZ BELTING COMPANY		19	19
ST. LOUIS SOUTHWESTERN RY. CO.	94	43	137
EAU CLAIRE-ST. LOUIS LUMBER CO.	35	207	242

LOY LANGE BOX COMPANY	5	23	28
SHULTZ BELTING COMPANY		19	19
ST. LOUIS SOUTHWESTERN RY. CO.	94	43	137
EAU CLAIRE-ST. LOUIS LUMBER CO.	35	207	242
VARIOUS	22	23	45
	493	1315	1808

S O U T H E R N Z O N E.

N A M E	OUTBOUND	INBOUND	TOTAL
FIDEL GANAHL LUMBER COMPANY	37	504	541
HUNKINS-WILLIS LIME & CEMENT CO.	1	256	257
A. KLAUBER SON'S IRON & METAL CO.	42	6	48
CLARKSVILLE CIDER COMPANY	11	25	36
LADENBERGER LUMBER COMPANY	1	22	23
VARIOUS	2	1	3
	94	814	908

INTERSTATE COMMERCE COMMISSION,
Exhibit No. 45 Docket No. 3151
Witness Moore Date 1-16-12
Complainant
Defendant Stenographer Phelps

CARLOAD STATEMENT.

MARCH 1911 - DECEMBER 1911.

STATE COMMERCE COMMISSION.
40 Docket No. 313-1
Exhibit Date 1-16-12
Stenographer

MIDDLE ZONE.

plaintiff

NAME	OUTBOUND	INBOUND	TOTAL
ANHEUSER BUSCH BREWING ASS'N.	21268	16747	38015
COOOPERATIVE COAL COMPANY		2	2
A. BUSCH GLASS WORKS	22	560	582
CHAS. EHLERMANN H & M CO.	14		14
GREEN TREE BREWERY	348	294	642
AMERICAN BREWING COMPANY	641	617	1258
F. W. GOEKE & COMPANY	31		31
E. B. HILL & BRO.	7	51	58
J. H. BELZ PROVISION CO.	3	8	11
BRUECKMANN COOPERAGE COMPANY	57	52	109
KOCH BUILDERS SUPPLY CO.	3	75	78
MANUFACTURERS' RAILWAY CO.	3	163	166
MORRIS & COMPANY		278	278
NATIONAL BREWING COMPANY	84	32	116
NOELKE RICHARD IRON WORKS	1	30	31
LOUIS OBERI BREWING COMPANY	331	220	551
[illegible]	241		241

ANHEUSER BUSCH BREWING ASS'N.	21268	16747	38015
COOOPERATIVE COAL COMPANY		2	2
A. BUSCH GLASS WORKS	22	560	582
CHAS. EHLERMANN H & M CO.	14		14
GREEN TREE BREWERY	348	294	642
AMERICAN BREWING COMPANY	641	617	1258
F. W. GOEKE & COMPANY	31		31
E. B. HILL & BRO.	7	51	58
J. H. BELZ PROVISION CO.	3	8	11
BRUECKMANN COOPERAGE COMPANY	57	52	109
KOCH BUILDERS SUPPLY CO.	3	75	78
MANUFACTURERS' RAILWAY CO.	3	163	166
MORRIS & COMPANY		278	278
NATIONAL BREWING COMPANY	84	32	116
NOELKE RICHARD IRON WORKS	1	30	31
LOUIS OBERI BREWING COMPANY	331	220	551
PURINA MILLS	245		245
ST. LOUIS BASKET & BOX CO.	98	206	304
ST. LOUIS COOPERAGE CO.	212	463	675
ST. LOUIS DRESSED BEEF & PROV. CO.		156	156
ST. LOUIS REFGR CAR COMPANY	24	166	190
H. N. SAYLOR, Jr.	1	23	24
SCHROETER COAL COMPANY		735	735
SOUTH SIDE COAL COMPANY		21	21
STANDARD FURNITURE COMPANY	27	23	50
STUTE & CO. P. & V. WORKS	5	38	43
UNION BREWING COMPANY		73	73
UNION FUEL COMPANY		225	225
CONTINENTAL BRICK COMPANY		47	47
LUMAGHI COAL COMPANY		60	60
ST. LOUIS GRAVEL & SAND COMPANY		14	14
RA. ANDERSON CONSTRUCTION CO.		9	9
CENTRAL DRY PLATE COMPANY		6	6
ERUIN-COLNON CONSTRUCTION COMPANY	3	10	13
WARREN STEEL CASTINGS COMPANY		6	6
CRAMER DRY PLATE COMPANY	4	10	14
U. S. QUARTER MASTER DEPOT	16		16
WALDSTEIN LUMBER COMPANY	12	6	18
R. W. GILLESPIE	6		6
M. W. WARREN COAL & COKE CO.	1	49	50
VARIOUS	98	66	164
TOTAL -	23565	21541	45106

DISTRIBUTION OF BUSINESS RECEIVED AND FORWARDED.

MARCH 1911 DECEMBER 1911.

NAME OF RAILROAD	OUTBOUND	INBOUND	TOTAL
BALTIMORE & OHIO SOUTHWESTERN	520	1210	1730
CHICAGO BURLINGTON & QUINCY-EAST	932	241	1173
CHICAGO BURLINGTON & QUINCY-WEST	1560	1932	3492
CLVE C[illegible] CHICAGO & ST LOUIS	803	799	1602
CHICAGO PEORIA & ST LOUIS	476	776	1252
CHICAGO ROCK ISLAND & PACIFIC	1760	656	2416
CHICAGO & ALTON	1689	1216	2905
CHICAGO & EASTERN ILLINOIS	430	354	784
ILLINOIS CENTRAL	1364	1471	2835
EAST ST LOUIS & SUBURBAN		48	48
LITCHFIELD & MADISON	56	44	100
MISSOURI KANSAS & TEXAS	958	647	1605
VANDALIA	475	1918	2393
WABASH-EAST	610	1641	2251
WABASH-WEST	1831	1330	3161
MISSISSIPPI VALLEY TRANSFER	4	19	23
LOUISVILLE & NASHVILLE	509	508	1017
MISSOURI PACIFIC	1417	1271	2688
NOEILE & OHIO	886	833	1719
SOUTHERN	1020	641	1661
TERMINAL RAILROAD ASSOCIATION	744	740	1484
TOLEDO ST LOUIS & WESTERN	1415	882	2297
ST LOUIS & BELLEVILLE ELECTRIC		74	74
ST LOUIS & OLIVE[illegible]		118	118

	1760	656	2416
CHICAGO & ALTON	1689	1216	2905
CHICAGO & EASTERN ILLINOIS	430	354	784
ILLINOIS CENTRAL	1364	1471	2835
EAST ST LOUIS & SUBURBAN		48	48
LITCHFIELD & MADISON	56	44	100
MISSOURI KANSAS & TEXAS	958	647	1605
VANDALIA	475	1918	2393
WABASH-EAST	610	1641	2251
WABASH-WEST	1831	1330	3161
MISSISSIPPI VALLEY TRANSFER	4	19	23
LOUISVILLE & NASHVILLE	509	508	1017
MISSOURI PACIFIC	1417	1271	1688
MOBILE & OHIO	886	838	1719
SOUTHERN	1020	641	1661
TERMINAL RAILROAD ASSOCIATION	744	740	1484
TOLEDO ST LOUIS & WESTERN	1415	882	2297
ST LOUIS & BELLEVILLE ELECTRIC		74	74
ST LOUIS & O'FALLON		112	112
ST LOUIS & SAN FRANCISCO	1254	1382	2636
ST LOUIS IRON MOUNTAIN & SOUTHERN	1049	1581	2630
ST LOUIS & SOUTHWESTERN	2329	1285	3614
ST LOUIS TROY & EASTERN	61	59	120
	24152	23670	47822

I N D U S T R I A L .

BUSINESS TO AND FROM.

		OUTBOUND	INBOUND	TOTAL
Middle Zone	- Page "A"	23565	21541	45106
Northern Zone	" "B"	493	1315	1808
Southern Zone	" "B"	94	814	908
	Total -	24152	23670	47822

Middle Zone	9423%
Northern Zone	0379%
Southern Zone	0189%
Middle Zone-ABBA-	8428%

INTERSTATE COMMERCE COMMISSION.
Exhibit No 47 Docket No. 7114
Witness Moore Date 1-16-72
Complainant
Defendant Stenographer Phelps

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

39 *Carload Shipments Received and Forwarded, Northern Zone.*

January 1, 1912, to August 31, 1912, Inclusive.

Industry.	In.	Out.	Total.
Industry.	In.	Out.	Total.
Industry.	In.	Out.	Total.
Bradbury Marble Company	42	16	58
Brueckmann Cooperage Company	37	95	132
Columbia Pretzel and Baking Company	....	6	6
Consolidated Coal Company	....	3	3
Coppersmith, M. and Company	....	18	18
Daniels, Oscar and Company	16	1	17
Devoy and Kuhn Coal Company	....	56	56
Eau Claire Branch, Saint Louis Lumber Company	606	194	800
Fairbank, The N. K. Company	353	40	393
Fritz, George J. Foundry	19	1	20
Gillespie, R. W.	....	2	2
Greenspon, Joseph and Son	....	1	1
Groepper Cooperage Company	15	...	15
Heibel, P. and Sons	85	2	87
Hill, E. B. and Brother	2	4	6
Independent Coal and Supply Company	246	4	250
Johnson, William C. and Son	4	1	5
Jones and Laughlin Steel Company	199	...	199
Kacer Manufacturing Company	7	...	7
Klauber, B. and Sons	44	57	101
Krug Lumber Company	....	1	1
Kuenzel Manufacturing Company	2	...	2
Laclede Gas Light Company	150	107	257
Lesser-Goldman Cotton Company	1	1	2
Loy-Lange Box Company	53	1	54
Luehrmann Lumber Company	....	3	3
Meyer Meinhardt Company	....	1	1
Murphy, J. P.	....	1	1
Nelson, N. O. and Company	....	1	1
Niemeyer Paint Company	2	...	2
Noelke and Richards	60	...	60
Northwestern Bottle Company	....	1	1
Nooter, John, Boiler Works	11	7	18
Pauly Jail Building Company	43	103	146
Peterson, L.	....	1	1
St. Louis Southwestern Railway	80	77	157

Saint Louis Rattan Company	1	24	
Standard Furniture Company	14	12	
Stute and Company	26	5	
Schoenberg, F. E.	13	...	
Schweitzer and Company	6	1	
Sample, O. H.	....	1	
S. Lumber Company (Luter, La.)	....	1	
Staudt and Rueckholdt	....	5	
Waldstein Lumber Company	....	19	
Western Foundry and Sash Weight Co.	134	29	
Wolff, D.	....	1	
Warner Lumber Company	5	...	
Warren Steel Casting Company	11	...	
Weber Drayage Company	1	...	
Westlake Construction Company	18	...	
Wurst, H. and Company	1	...	
Remmer, Fred	1	...	
Wayne Manufacturing Company	1	1	
Stecher Cooperage Company	1	...	
Scobee, J. F.	1	...	
Total	2311	905	3

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

940 Interstate Commerce Commission. Docket No. 3151. D
7/20/12. Compt. Exhibit No. 50. Witness, Mo
Stenographer, Flannery.

Summary of Shipments Received and Forwarded.

January 1, 1912, to August 31, 1912, Inclusive.

Zone.	In.	Out.	Tot
Northern	2311	905	3
Southern	364	78	4
Middle	15045	18227	33
Miscellaneous	2	14	
Total	17722	19224	36

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

941 *Carload Shipments Received and Forwarded, Southern Zone.*

January 1, 1912, to August 31, 1912, Inclusive.

Industry.	In.	Out.	Total.
Arnold, The Company	9	.....	9
Belz, J. H. Provision Company	40	9	49
Addis, J. T.	3	.....	3
Busch-Sulzer Brothers-Diesel Engine Company	150	1	151
Cherokee Lumber Company	2	.....	2
Clarksville Cider Company	4	.....	4
Continental Portland Cement Co.	.....	3	3
Ganahl, Fidel Lumber Company	129	58	187
Hunkins-Willis Lime & Cement Co.	2	4	6
Ladenberger Lumber Company	20	.....	20
Medart Manufacturing Company	2	3	5
Urban Atwood Heating Company	3	.....	3
Total	364	78	442
Miscellaneous.			
Reconsigned Cars	.....	3	3
Various	2	11	13
	2	14	16

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

942 *Carload Shipments Received and Forwarded, Middle Zone.*

January 1, 1912, to August 31, 1912, Inclusive.

Industry.	In.	Out.	Total.
American Land, Timber & Stave Co.	.....	1	1
Anheuser-Busch Brewing Association	11376	16378	27754
American Brewing Company	487	500	987
Bickett Coal Company	....	3	3
Binz Hide and Tallow Company	1	.....	1
Bolz-McBride Cooperage Company	.....	2	2
Brockman, M.	.....	1	1
Busch, Adolphus, Glass Works	380	4	384
Carter, William, Lumber Company	4	.....	4
Central Dry Plate Company	13	.....	13
Cohen and Schwartz Iron Company	.....	12	12
Columbia Brewing Company	.....	1	1

Continental Brick Company	1	.....
C. R. I. & P. Railway	.....	1
Cramer Dry Plate Company	31	4
Custer, William Lumber Company	.....	1
Depot Quartermaster, U. S.	.....	7
D. K. L. W. Co. (Doyle, La.)	.....	1
Ehlermann, Charles H. & M. Co.	.....	8
El. C. S. F. (Brownell, Texas)	.....	2
Faust, E. A.	1	.....
Faust, Harvey Cooperage Company	.....	3
Foundation, The Company	.....	1
Federal Stave and Lumber Company	.....	1
Fruin-Colnon Construction Company	7	6
Glencoe Lime and Cement Company	.....	1
Gravois Planing Mill Company	.....	4
Goeke, F. W. and Company	.....	11
Green, George Lumber Company	.....	4
Graubner, Edward	2	.....
Green Tree Brewing Company	279	321
Gruner, Phil, Lumber Company	1	.....
Hollingshead, J. D.	.....	1
Illinois Central Railroad	.....	1
Indiana Paper Company	1	.....
Jackson Lumber Company	.....	1
Janeff, George	1	.....
Jenkins Cooperage Company	1	.....
Johnes-Mowbry-Nelson Company	.....	1
Kellermann Contracting Company	5	3
Klauber, A. and Sons	2	32
Louisiana State Rice Milling Co.	.....	2
Lumaghi Coal Company	40	.....
Lynn, J. A.	5	.....
Manufacturers' Railway Company	186	1
Mathes I. & M. Company	1	1
Maxson Lumber Company	.....	1
Meyer Supply Company	4	.....
Meramec Portland Cement Company	.....	2
Miller, W. A. Elevator Company	.....	1
Morris and Company	172	.....
National Brewing Company	23	17
Neumond, K. & E. Company	.....	3
Hottelet Company of Milwaukee	.....	3
Link Supply Company	.....	1
Obert Brewing Company	215	301
Purina Mills	.....	194
Saint Louis Basket & Box Co.	283	174

Pennoyer, J. C.	.....	1	1
Rosenblatt, E.	.....	1	1
Ring, John	.....	1	1
Saint Louis Cooperage Company	397	156	553
St. Louis Dressed Beef Co.	54	2	56
St. Louis Refrigerator Car Co.	289	34	323
Schroeter Coal Company	531	.....	531
Schwaner, F. C.	1	.....	1
Seidel, Julius Lumber Company	.....	9	9
Stanley, D. S.	1	.....	1
Swift and Company	17	.....	17
Union Brewing Company	75	1	76
Union Fuel Company	61	.....	61
United States Engineer	1	.....	1
Warren, M. W. Coal Company	80	.....	80
Wagner Manufacturing Company	1	.....	1
Webb-Kunze Construction Company	14	.....	14
Soo Line P. C. Company	.....	1	1
United States Reclamation Service	.....	1	1
Kola Lumber Company, Kola, Miss.	.....	1	1
K. R. C. Lumber Company, Alligator, Miss.	.....	1	1
Payton Lumber Company	1	.....	1
Total	15045	18227	33272

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

943

Outbound Cars Delivered to St. Louis, Iron Mountain & Southern Railway at 1st Street Yard.

Northern Zone:

Longest haul—(I to B, Blue Print):

1st Str. Yard to La Salle Street..... 10,184.8′—1.92 Miles

Shortest haul—(I to C, Blue Print):

1st Str. Yard to Louisa Street..... 2,516.0′—0.47 "

Average Haul ..... 6,350.4′—1.20 "

Middle Zone:

Longest haul—(I to D, Blue-print):

1st St. Yard to 13th Str. Yard..... 4,863.0′—0.95 "

Shortest haul—(I to E) (blue print):

1st Str. Yard to Shipping Yard..... 1,808.0′—0.34 "

Average haul ..... 3,335.5′—0.65 "

Southern Zone:

Longest haul—(I to F, Blue-print):		
1st Str. Yard to Zepp Str. Spur.....	5,747.9′—1.08	"
Shortest haul—(I to G—Blue-print):		
1st Str. Yard to Utah Str. Spur.....	4,516.9′—0.85	"
Average haul	5,132.4′—0.97	"
Average for three zones.....	4,939.4′—0.93	"

Average haul for three zones, for cars coming in and returned—9,878.8′ or 1.87 Miles.

Interstate Commerce Commission. Docket No. 3151. Date 9/25/12. Comp. Exhibit No. 54. Witness, Moore, Senographer —— ——.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

944

Outbound Deliveries to St. Louis, Iron Mountain & Southern at Their Barton Street Yard.

Northern Zone:

Longest haul—(B to A—Blue print):		
La Salle to Barton Street.....	12,452.9′—2.35	Mi
Shortest haul—(C to A—Blue-print):		
Louisa St. to Barton Str.....	7,784.1′—1.447	"
Average haul	10,118.5′—1.91	"

Middle Zone:

Longest haul—(D to A, blue-print):		
13th St. Yard to Barton Str.....	10,131.1′—1.91	"
Shortest Haul—(E to A, Blue-print):		
Shipping Yard to Barton Str.....	7,076.1′—1.34	"
Average haul	8,603.6′—1.62	"

Southern Zone:

Longest haul—(F to A, Blue-print):		
Zepp Str. to Barton Str.....	11,016.0′—2.08	"
Shortest haul (G to A, Blue-print):		
Utah Str. to Barton Str.....	9,785.0′—1.85	"
Average haul	10,400.5′—1.96	"
Average haul for three zones.....	9,707.5′—1.83	"
Average haul for three zones, for cars coming in and returned.....	14,646.9′—2.77	"

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

945

Inbound Cars from Wiggins Ferry Company.

Northern Zone:

Longest haul (H to B, blue-print):
Transfer Yard to La Salle Str..... 15,982.1'—3.02 Miles

Shortest haul (H to C, blue-print):
Transfer Yard to Louisa St. spur..... 8,468.8'—1.60 "
Average haul ..... 12,225.2'—2.31 "

Middle Zone:

Longest haul, (H to D, blue-print):
Transfer Yd. to 13th Str. Yard..... 10,748.3'—2.03 "

Shortest haul (H to E, blue-print):
Transfer Yard to Shipping Yard..... 5,693.3'—1.07 "
Average haul ..... 8,220.8'—1.55 "

Southern Zone:

Longest haul—(H to F, blue-print):
Transfer Yard to Zepp Str. spur..... 11,546.2'—2.18 "

Shortest haul (H to G, blue-print):
Transfer Yard to Utah Str. spur..... 10,315.2'—1.95 "
Average haul ..... 10,930.7'—2.07 "
Average haul for three cones..... 10,458.9'—1.98 "

Average haul for all three zones, for cars coming in and returned..... 21,603.4'or 4.09 Miles.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

946

Outbound Deliveries to Wiggins Ferry Company at Lesperance Street.

Northern Zone:

Longest haul—(B to L, blue-print):
La Salle to Lesperance Str..... 17,001.3'—3.22 Miles

Shortest haul—(C to L, blue-print):
2nd & Louisa to Lesperance Str..... 9,487.5'—1.79 "
Average ..... 13,244.8'—2.50 "

Middle Zone:

Longest haul—(D to L, blue print):
13th Str. to Lesperance Str..... 9,767.5'—1.85 "

Shortest haul, (E to L, blue-print):
Shipping Yard to Lesperance Str..... 6,712.5'—1.27 "
Average ..... 8,240.0'—1.56 "

Southern Zone:

Longest haul, (F to L—Blue-print):

Zepp Str. spur to Lesperance Street.... 12,564.4'—2.38 "

Shortest haul (G to L,—Blue-print):

Utah Street spur to Lesperance St..... 11,333.4'—2.14 "
Average ..... 11,948.9—2.26 "
Average haul for three zones..... 11,144.5'—2.11 "

Average haul for all three zones, for cars coming in and returned..... 21,603.4'or 4.09 Mi

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

947

Inbound Cars from St. Louis, Iron Mountain & Southern Railw

Northern Zone:

Longest haul,—(I to B, blue-print):

First Street Yard to La Salle Str..... 10,184.8'—1.92 Mi

Shortest haul—(I to C, blue-print):

First Street Yard to Louisa Str..... 2,516.0'—0.47 "
Average haul ..... 6,350.4'—1.20 "

Middle Zone:

Longest haul, (I to D, blue-print):

1st Str. Yard to 13th Str. Yard..... 4,863.0'—0.95 "

Shortest haul (I to E, blue-print):

First Str. Yard to shipping Yard..... 1,808.0'—0.34 "
Average haul ..... 3,335.5'—0.65 "

Southern Zone:

Longest haul—(I to F, blue-print):

First Str. Yard to Zepp St. spur..... 5,747.9'—1.08 "

Shortest haul (I to G, blue-print):

First Str. Yard to Utah St. Spur..... 4,516.9'—0.85 "
Average haul ..... 5,132.4'—0.97 "
Average for three zones..... 4,939.4'—0.93 "

Average gaul for three zones, for cars coming in and returned..... 14,646.9'or 2.77 Mi

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

Hamilton's

MANUFACTURERS RAILWAY COMPANY

Statement of Operating Revenue, Operating Expenses, Taxes, Rentals and Interests, and Net Income from Operation-with averages per car handled for revenue-year ended June 30, 1911.

				Average per car
Operating Revenue			$234047.72	
Operating Expenses:				
Maintenance of Way & Structures		$30836.71		
Maintenance of Equipment		25225.37		
Traffic Expenses		1725.91		
Transportation Expenses		53861.48		
General Expenses		39799.51		
Total		$151448.98		$2.4466
Taxes		6956.48		.1125
Rentals:				
Track	$24000.00			
City Wharf	4000.00			
Office & Miscellaneous	1454.99	29454.99		
Interest on Operating Capital		6106.36		.5749

City Wharf	4000.00			
Office & Miscellaneous	1454.99	29454.99		
Interest on Operating Capital		6106.36		.5749
Total			193[illegible].81	
Net Income from Operation				$40080.91

INTERSTATE COMMERCE COMMISSION
Docket No 3151 Date 9-25-1912
Comp's Exhibit No. 60 Witness Hamilton
Stenographer

Cars Handled:

Interchanged with Connections	52281
Intra Works Switching	7104
Intra City Switching	167

Intra City Switching	167
Weighing Service	2294
Total	* 61846

* Averages above shown are figured on this basis.

If to the net income from Operation-$40080.91-there be added Miscellaneous Other Income (Rent of Building) amounting to $1145.14, the Net Corporate Income of the Company is seen to be $41226.35. The Investment in Road and Equipment which produce the operating Revenue shown above is $529342.25. Thus the return earned by the Company upon its investment was 7.4%.

MANUFACTURERS' RAILWAY COMPANY

STATEMENT

	Revenues	Operating Revenues
Apr. 1909 -	$ 9,079.08	$ 27,731.44
May. 1909 -	6,111.77	15,380.77

	$ 9,079.08	$ 27,731.44
May. 1909. -	6,111.77	15,380.77
Jun. 1909. -	8,263.58	18,901.17
Jul. 1909 -	9,018.66	20,458.45
Aug. 1909 -	8,305.57	21,298.24
Sep. 1909 -	8,695.53	18,220.92
Oct. 1909 -	10,101.53	16,178.37
Nov. 1909 -	8,824.01	15,407.67
Dec. 1909 -	9,865.25	14,279.59
Jan. 1910 -	9,724.01	12,948.56
Feb. 1910 -	7,267.14	13,785.58
Mar. 1910 -	7,766.27	19,957.07
T O T A L -	$103,003.30	214,540.63
Fixed Charges - per month $6,827.00 - 12 mo. -	81,924.00	184,927.30
Surplus - Apr. 1, 1909 - Mch. 31, 1910 -		$ 29,613.33

NOTE:- 42,689 car-loads handled.
Expense per car, on operating basis, $2.42.
Expense per car, on operating and fixed charges basis, $4.34.

The foregoing is a condensed statement of Operating Expenses, Revenues and Fixed Charges; also net income of the Manufacturers' Railway Company for a period commencing April 1st, 1909, and ending March 31st, 1910.

F. J. Ziegler,
Auditor.

948

Average inbound car movement from Wiggins Ferry Co. and St. Louis, Iron Mountain & Southern R. R..... 1.45 Miles
Average Outbound car movement to Wiggins Ferry Company and St. Louis, Iron Mountain & Southern R. R.. 1.29 "
Total average car movement for all zones and all connections, including return of empties, which is the average car mileage of all cars handled..... 3.12 "

Exclusive of switching in making up trains.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

(Here follow tables marked pages 949 and 950.)

951

Interstate Commerce Commission. Docket No. 3151. Exhibit 62. Witness, Moore. Complainants, —— ——. Date 5-3-19 Steno., Flannery.

The American Railway Association.

Office of the General Secretary, 24 Park Place.

NEW YORK, April 27, 1910.

Mr. G. F. Moore, President & General Manager, Manufacturers' R Co. of St. Louis, St. Louis, Mo.

DEAR SIR: Your letter of April 18th, respecting the application your Company for admission to the Per Diem Rules Agreement h been received.

My duties in the matter are purely ministerial, and if you des me to do so, I will be glad to present your letter to the Committee Relations between Railroads at its next meeting.

In this connection, I desire to inform you that your former co munication of March 30th, was considered by the Committee at recent meeting. After careful consideration of the statements ma by you, the General Secretary was requested to advise you that view of the requirements for admission to the Per Diem Rules Agr ment as prescribed by the Association the Committee did not feel th its action in the matter can be changed at this time.

Yours truly,

(Signed) W. F. ALLEN,
General Secretary.

C. G.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

952 ST. LOUIS, April 18, 1910.

Mr. W. F. Allen, General Secretary, The American Railway Associ tion, 24 Park Place, New York, N. Y.

DEAR SIR: I have your letter of April 11th.

Our Company desires to co-operate fully in all matters deemed t be for the benefit of the American Railways. We wish to accept th uniform code of demurrage rules and to operate under same. It apparent that in order to do this we must be placed on an equali with other switching companies, and feel that we can best trust th spirit of fairness that should prevail between railroads so as to gai this membership.

It is rather unfortunate that our two immediate connections woul be required to sign our application for membership before it coul be acted upon favorably by the American Railway Association, b cause at this time our relations seem somewhat strained. We cannot however, voluntarily submit to a ruling that plainly discriminates against our property and places an unwarranted taxation on our bus ness.

You have been advised of the relations existing between the Manu-
turers' Railway Company and St. Louis, Iron Mountain & South-
n Railway Company, et al.; and, pending a hearing before the
terstate Commerce Commission, it seems to be entirely within rea-
n that no additional burdens be placed upon our property.
I am enclosing with this letter a copy of one written to Mr. Roach,
nager of The Central Demurrage and Storage Bureau.
Believing this matter to be of some importance and sincerely hop-
g that I may not be compelled to engage in any further litigation,
m writing this to ask your co-operation in adjusting this member-
ip application without recourse to either state or federal authorities.

Very truly yours,

——— ———,
President & General Manager.

A.—M.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

Copy.

Circular No. 915.

The American Railway Association.

xtract from the Articles of Organization.—Article 2. *Its Object is the Discussion and Recommendation of Methods for the Management and Operation of American Railways.*

Office of the Secretary, 24 Park Place.

F. A. Delano, President.
Daniel Willard, 1st V. P.
W. A. Gardner, 2nd V. P.
W. F. Allen, Sec'y & Treas.

NEW YORK, April 19, 1909.

DEAR SIR: The Spring session of The American Railway Associa-
ion will be held at the United Engineering Society Building, 25
West 39th Street, New York City, on Wednesday, May 19, 1909, at
1.00 a. m.

Reports will be presented by the following Committees:
Executive Committee;
Committee on Train Rules;
Committee on Car Service;
Committee on Safety Appliances;
Joint Committee on Interlocking and Block Signals;
Committee on Transportation of Explosives;
Committee on Standard Location for Third Rail Working Con-
uctors;
Committee on Car Efficiency;
Committee on Nominations.

The election of a President and a Second Vice-President will take
lace at this meeting. Two members of the Executive Committee,

three members of the Committee on Train Rules and three m
bers of the Committee on Nominations are to be elected.

For your convenience, in case your Company desires to becom
associate member of the Association, a form of application is encl
herewith.

The present membership of the Association comprises 338 m
bers, operating 247,435 miles of road, and 64 associate memb
operating 2,703 miles (as shown by the accompanying list).

Extracts from the Articles of Organization and By-Laws, relat
to membership in the Association, are also shown on the last p
of the enclosed circular.

F. A. DELANO, *President*

W. F. ALLEN, *Secretary.*

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

954

Copy.

Manufacturers' Railway Company of St. Louis.

South Side Bank Building, Broadway & Pestalozzi.

Executive Department.

G. F. Moore, President.

ST. LOUIS, Mo., January 25th, 1910

Mr. W. F. Allen, Gen. Sec'y & Treas., American Railway Ass'n,
Park Place, New York.

DEAR SIR: The Manufacturers' Railway Company, of St. Lo
reporting to the Interstate Commerce Commission, as a switchi
and terminal company, coming under Class 1, set up in the Offi
Railway Guide, on Page 61, desires to become a member of the p
diem agreement.

We have no cars of our own at present, but handle the St. Lo
Refrigerator Car Company equipment as home cars. A very la
percentage of the business we handle is carried in this equipme
but we also handle a great number of foreign cars. The busin
transacted by this company, for the six months, ended Decemb
31st, 1909, amounted to 22,483 carloads, and I estimate that 2
of this business was carried in foreign equipment.

If, in order to enter the per diem agreement, as either a memb
or an associate member, it is necessary that we own equipment op
ated under the name of the Manufacturers' Railway Company,
St. Louis, we will procure such equipment, but in as much as 75
of our business is handled in equipment controlled by us, but n
eligible to membership in the per diem agreement, our positi
strikes me as rather peculiar. The only object we would have
owning equipment other than what we are now using, would be

d it out on other lines to offset the per diem, which we would be ced to pay.

I would appreciate your advice regarding this matter.

Yours very truly,

(Signed) G. F. MOORE,
President and General Manager.

M. K.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

5

Copy.

The American Railway Association.

Office of the General Secretary, 24 Park Place.

F. A. Delano, President.
Daniel Willard, 1st V. P.
W. G. Besler, 2nd V. P.
W. F. Allen, Gen. Sec. & Treas.
J. E. Fairbanks, Ass't Gen. Sec. and Ass't Treas.

NEW YORK, January 31, 1910.

r. G. F. Moore, Pres. & Gen. Mgr., Manufacturers' Ry. Co. of St. Louis, St. Louis, Mo.

DEAR SIR: Replying to your letter of January 25th.

The requirements prescribed by the American Railway Association, covering admission to the Per Diem Rules Agreement, are as llows:

"Any railroad which is a full member, or eligible to full membership in the American Railway Association, shall be eligible to beme a party to the Per Diem Rules Agreement.

"Any railroad ineligible to full membership in said Association ay, upon the recommendation of the Committee on Relations beeen Railroads and the approval of the Executive Committee of the merican Railway Association, become a party to the Per Diem ules Agreement, if qualified and endorsed as follows: Such a road ust be of standard gauge, regularly incorporated or chartered, must rform a general freight business as a common carrier, with regurly published tariffs, and be equipped with adequate motive power r its business. The application must be favorably endorsed by at ast two-thirds of the lines connecting with such road."

The requirements covering admission to membership in The merican Railway Association are as follows:

"A road must be a common carrier, dependent upon its revenue om transportation. Railways are ineligible to membership, whether corporated or not, which are used primarily to transport the maial or product of an industry or industries to and from a point on railroad which is a common carrier, or those which are merely djuncts to such industries."

If your Company desires to apply for admission to the Per Di Rules Agreement, it will be necessary, under the rules, for you supply the information called for on the enclosed circular. On ceipt of this information, the application can then be submitte the proper Committee for action thereon.

Yours truly,

(Signed) W. F. ALLEN,
General Secretary

L./Enc.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

956

Copy.

2—1909.

Circular No. 564.

The American Railway Association.

To be Returned to W. F. Allen, Secretary, 24 Park Place, New Yo

Questions to be Answered by Applicants for Admission to the P Diem Rules Agreement.

1. What is the date and place of incorporation of your Co pany? (Please furnish a copy of certificate of incorpo tion.)
   Answer—April 14th, 1887, under the laws of Missouri, co attached.
2. Is your Company a common carrier performing a gene freight business. Also please state the nature of the gene business of your company.
   Answer—Our Company is performing a switching and ter nal business Class 1 Interstate Commerce Commission, a as such made monthly and annual reports for fiscal y ended June 30th, 1909.
3. How many miles of standard gauge main track, exclusive sidings, does your Company operate?
   Answer—Two and one-half miles.
4. How many Locomotives have you in service?
   Answer—Four Locomotives.
5. How many and what kind of cars have you in service?
   Answer—We operate the St. Louis Refrigerator Car Co pany's equipment as home cars. Total number 126 divided 1253 Refrigerators, 4 Box Cars and 3 Flats.
6. Are these cars adapted for interchange with other railroa under the Master Car Builders' Association Rules?
   Answer—Yes.
7. Is your Company a party to the Master Car Builders' Associ tion Agreement?
   Answer—The St. Louis Refrigerator Car Company is a me

ber of the Master Car Builders' Association Agreement, the International Car Account Association, and the American Association of Railroad Superintendents.

8. With what railroads does your Company connect?
Answer—This Company has direct connection with the St. Louis, Iron Mountain & Southern, and Terminal Railroad Association of St. Louis.

9. What industries, with sidings, does your Company serve?
Answer—Please note blueprint attached hereto.

10. At what points have you warehouses or team tracks for the convenience of the general public?
Answer—Please note blueprint attached hereto.

11. What is the monthly average of carloads received from and delivered to connections, divided by commodities?
Answer—For eleven months ended December 31st, 1909, this Company handled 38,000 loaded cars; delivered connections 19,611 loads; received from connections 18,389 loads—monthly average 3,454 loads.

957

11.

12. What is the average number of revenue freight cars on your line each day?

	In service.	In shop.	Total.
Home Revenue	114	.....	.....
Foreign Revenue	...	.....	.....
Total	...	.....	.....
Private Revenue	...	.....	.....
Grand Total	114	.....	.....

13. Does your Company issue a time-table? (If so, please attach a copy hereto.)
Answer—No.

14. Does your Company issue tariffs, and are these joint or only local tariffs? (Please attach copy of each.)
Answer—Yes! and concurs in tariffs to other lines.

15. Please supply a map of your road.
Blueprint attached.

MANUFACTURERS' RAILWAY COMPANY,
Saint Louis, Missouri.

Date—February 3rd, 1910.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

958 Copy.

Manufacturers' Railway Company of St. Louis.

South Side Bank Building, Broadway & Pestalozzi.

Executive Department.

G. F. Moore, President.

ST. LOUIS, March 17, 1910.

Mr. W. F. Allen, General Secretary & Treasurer, The American Railroad Association, New York City, N. Y.

DEAR SIR: In reply to your letter of January 31st, I submitted our application for membership, as per your Circular No. 564.

Up to the present time I have not received an acknowledgment of receipt of this application from your department.

Will you please advise me whether or not same has been duly received and docketed?

Yours very respectfully,

(Signed) G. F. MOORE,
President & General Manager.

A.—M.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

959 Copy.

The American Railway Association.

Office of the General Secretary, 24 Park Place.

F. A. Delano, President.
Daniel Willard, 1st V. P.
W. G. Besler, 2nd V. P.
W. F. Allen, Gen. Sec. & Treas.
J. E. Fairbanks, Ass't Gen. Sec and Ass't Treas.

NEW YORK, March 23, 1910.

Mr. G. F. Moore, President, Manufacturers' Railway Co. of St. Louis, St. Louis, Mo.

DEAR SIR: Replying to your letter of March 17th.

The application of your Company is now in the hands of the Committee on Relations between Railroads. I will advise you as promptly as possible of any action taken thereon.

Yours truly,

(Signed) W. F. ALLEN,
General Secretary.

C. G.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

60 Copy.

The American Railway Association.

Office of the General Secretary, 24 Park Place.

F. A. Delano, President.
Daniel Willard, 1st V. P.
W. G. Besler, 2nd V. P.
W. F. Allen, Gen. Sec. & Treas.
J. E. Fairbanks, Ass't Gen. Sec. and Ass't Treasurer.

NEW YORK, March 25, 1910.

Mr. G. F. Moore, President, Manufacturers' Railway Co. of St. Louis, St. Louis, Mo.

DEAR SIR: Your application on behalf of the Manufacturers' Railway Company of St. Louis to become a party to the Per Diem Rules Agreement, was presented to the Committee on Relations between Railroads of this Association at its meeting on March 18th.

After a careful consideration of the application, the Committee requested the General Secretary to state that, in its opinion, under the requirements prescribed by the Association, the Manufacturers' Railway Co. of St. Louis is not eligible to be a party to the Agreement.

Yours truly,
(Signed) W. F. ALLEN,
General Secretary.

C. G.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

61 ST. LOUIS, March 30, 1910.

Mr. W. F. Allen, General Secretary, The American Railway Association, 24 Park Place, New York.

DEAR SIR: I have your letter of March 25th.

Under the new order of things created by the adoption of the uniform demurrage rules it is very essential that our Company receives the benefit secured by lines holding membership in the American Railway Association. It will amount to a discrimination against us, in case we are not allowed to operate on equal basis with lines performing a similar service for the public.

If you will outline the features that make it impossible for your Committee on Relations between Railroads to pass favorably upon my application, I will immediately try to remedy the conditions.

I am ready to comply with any reasonable requirements, and if it is necessary that we own a certain amount of interchangeable equipment I will procure it now in advance of the time that I had intended to purchase it.

Respectfully yours,
——— ———,
President & General Manager.

A.—M.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

962 St. Louis, April 4, 1910.

Mr. W. F. Allen, General Secretary, The American Railway Association, 24 Park Place, New York.

Dear Sir: Replying to your letter of April 2nd, 1910, same being an answer to a communication addressed you under date of March 30th:

This Company is operating as a switching and terminal company serving a number of important industries, as well as the general public. Switching and terminal companies that are members or associate members of the American Railway Association are allowed the privilege of participating in the per diem arrangements and reclaim allowances as a part of the rules operated by the Per Diem Association.

To illustrate more clearly, we are, at present, working on a car service basis, being entitled up to May 1st, 1910, to hold a car seventy-two hours before paying to our connections $1.00 a day car service.

We have two connections: St. Louis, Iron Mountain & Southern Railway and the St. Louis Transfer Railway Company, being a part of the Terminal Railroad Association of St. Louis. Each of these lines receives a reclaim allowance of six days and are classed as switching lines in handling this equipment.

It seems only just and equitable that the Manufacturers' Railway Company be classed as a switching line, and for all business destined to or from its lines the St. Louis Transfer Railway Company and the St. Louis, Iron Mountain & Southern Railway Company should be classed as intermediate delivering lines.

Very truly yours,

——— ———,

President & General Manager.

A.—M.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

963 The American Railway Association.

Office of the General Secretary, 24 Park Place.

F. A. Delano, President.
Daniel Willard, 1st V. Prest.
W. G. Besler, 2nd V. Prest.
W. F. Allen, Gen. Sec. & Treas.
J. E. Fairbanks, Ass't Gen. Sec. and Ass't Treas.

New York, April 11, 1910.

Mr. G. F. Moore, President, Manufacturers' Ry. Co. of St. Louis, St. Louis, Mo.

Dear Sir: Replying to your letter of the 4th.

You are mistaken in your premises. Associate membership in the American Railway Association gives no privilege in connection

with per diem arrangements or reclaim allowances to switching and terminal companies. Each application for admission to the Per Diem Rules Agreement as presented is decided upon its own merits.

Yours truly,

(Signed) W. F. ALLEN,
General Secretary.

L.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

964 Interstate Commerce Commission. Docket No. 3151. Date, 9-26-1912. Comp. Exhibit No. 73. Witness, Moore. Stenographer, J. V. L. F.

Requested by Mr. Colston.

(See page 337, stenographer's record, second hearing.)

Case 3151.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

965 *Analysis Locomotive Repair Account—Year Ending June 30, 1910.*

Month.	Year.	Wages of machinists.	Material.	Repairs.	Totals.
July,	1909.....	$142.56	23.40	59.41	$225.37
Aug.,	.....	162.03	92.50	.....	254.53
Sept.,	.....	174.06	130.04	.....	304.10
Oct.,	.....	155.16	142.50	24.97	322.63
Nov.,	.....	184.86	186.90	24.21	395.97
Dec.,	.....	246.60	205.59	141.93	594.12
Jan.,	1910.....	218.52	186.90	395.08	800.50
Feb.,	.....	199.72	211.59	.....	411.31
Mar.,	.....	209.80	186.90	.....	396.70
Apl.,	.....	*214.44	494.07	717.02	1425.53
May,	.....	232.00	411.15	.....	643.15
June,	.....	245.60	952.35	141.53	1339.48
		$2385.35	3223.89	1504.15	7113.39

*April wages $214.44 were charged in error to O. E. 11—Car repairs.

Heavy repairs for Jan., 1910, & Apl., 1910, caused by charge made by Terminal R. P. for overhauling engines.

Depreciation of Equipment for year ending June 30, 1910.

$18,254.90 was charged to Operating Expense.

15. Equipment Depreciation.

No other items were charged to this account.

Wages of Machinists	$2385.35
Material	3223.89
Repairs	1504.13
Total	$7113.37

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

966 Requested by Mr. Colston.

(See page 337, stenographer's record, second hearing.)

Case 3151.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

967 *Analysis of Superintendence—Maintenance of Equipment Expense Year Ending June* 30, 1911.

Month. Year.	Dues supts. ass'n.	Salary master-mechanic.	Inspectors
July, 1910	$47.93	175.00	.....
Aug.,	50.36	175.00	.....
Sept.,	45.86	175.00	.....
Oct.,	93.88	175.00	53.90
Nov.,	.....	175.00	106.30
Dec.,	101.77	175.00	.....
Jan., 1911	89.01	175.00	54.68
Feb.,	.....	175.00	54.23
Mch.,	.....	175.00	56.18
Apl.,	.....	175.00	.....
May,	.....	175.00	55.49
June,	46.56	175.00	57.11
	$475.37	2100.00	437.89

Proportion of Expense:

Supts. Ass'n for Chief Inspector	475.37
Wages, Master-Mechanic	2100.00
Inspectors	437.89
Total	$3,013.26

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

968 In submitting an analysis of various accounts for the fiscal years of 1910 and 1911, relating to the up-keep or maintenance of our locomotive equipment, it should be noted, that for the year ending June 30, 1909, the only charge made to Superintendence was our proportion of Wages of Car Inspectors; a part of salary of

Superintendent for March, 1909, and a small purchase of material, amounting in all to $290.00. For year ending June 30, 1910, only our proportion of Car Inspectors' wages, $159.00, was charged to this account.

The Foreman of the Round House, for the period 1910, was carried as a Machinist and his salary so listed.

In July, 1910, and throughout the entire fiscal year Mr. C. F. Gregory was carried as a Master Mechanic, at an annual salary of Twenty-one Hundred ($2,100.00) Dollars, charged to Superintendence.

For the information of the defendants' counsel, it is fair to state that, until the Manufacturers' Railway began to operate their line in January, 1909, the Iron Mountain kept up the locomotive equipment and no charge was necessary, other than such as have been made in the incomplete report for the fiscal year of 1909.

It is also a fact that the Manufacturers' Railway procured new equipment of the very best pattern and kept adding to it, from time to time, thereby increasing the cost of maintenance of equipment, both by the multiplication of locomotives and by their ageing in the service.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

969 Interstate Commerce Commission. Docket No. 315 Date, 9-26-12. Comp. Exhibit No. 74. Witness, Moon Stenographer, —— ——.

Requested by Mr. Colston.

(See pages 341-342, stenographer's notes, second hearing.)

Case 3151.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

970 *Analysis of General Expense Account.*

Manufacturers' Railway Company.

Fiscal Year Ending June 30th, 1909.

Month.	Salaries gen. off.	Expenses gen. off.	Salaries & exp. clerks & attendants.	Stat'y & prtg.	Misc. exp.	Total
1908						
July	706.67	.....	.....	47.75	.....	754.4
Aug.	333.33	.....	.....	10.00	.....	343.3
Sept.	333.33	.....	.....	20.50	.....	353.8
Oct.	333.33	.....	.....	10.00	.....	343.3
Nov.	706.67	.....	.....	15.00	.....	721.6
Dec.	706.67	.....	.....	6.00	.....	712.6
1909.						
Jan.	333.33	.....	10.00	21.25	20.00	384.5
Feb.	666.68	.....	20.00	11.40	.....	698.0
Mar.	813.81	.....	80.50	47.50	.....	941.8
Apl.	706.66	138.90	138.34	10.50	4.00	998.4
May	1400.01	201.25	30.50	21.00	57.00	1709.7
June	1106.66	109.57	40.00	4.00	60.88	1321.1
	$8147.15	449.72	319.34	224.90	141.88	9282.9

Recapitulation.

Salaries—Gen'l Officers	$8147.1
Expenses— " "	449.7
Salaries & Expenses of Clerks & Attendants.....	319.3
Stationery & Printing.....	224.9
Miscellaneous Expenses	141.8
Total.....	$9282.9

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

Month.	Salaries gen. off.	Expenses gen. off.	Salary & exp. clks. & attendants.	Sta. & prtg.	Misc. off. expenses.	Advert'g.	Totals.
1909.							
Jul.	1,478.67	70.80	11.14	10.78	94.05	.....	1,665.44
Aug.	1,478.66	80.85	38.22	5.00	.....	.....	1,602.73
Sep.	1,478.66	56.20	94.58	6.31	92.99	.....	1,728.74
Oct.	1,478.33	360.30	167.80	6.50	16.10	.....	2,029.03
Nov.	1,478.33	207.25	131.06	8.10	15.20	.....	1,839.94
Dec.	1,478.34	95.35	139.20	28.91	72.26	.....	1,814.06
1910.							
Jan.	1,778.33	48.50	133.40	19.96	60.86	.....	2,041.05
Feb.	1,778.33	79.50	201.60	8.91	17.77	.....	2,086.11
Mar.	1,778.34	49.50	217.93	24.20	69.52	.....	2,139.49
Apr.	1,778.33	17.50	140.56	17.82	66.00	.....	2,020.21
May	1,778.33	78.24	141.79	48.40	15.13	.....	2,061.89
June	1,778.33	192.25	111.94	20.50	20.20	450.00	2,573.22
	$19,540.98	1,336.24	1,529.22	205.39	540.08	450.00	23,601.91

Salaries of Officers.

Name.	Title.	July, 1909. Dec., 1909.	Jan., 1910. June, 1910.
Adolphus Busch	Vice-Pres.	$300.00	400.00
Aug. A. Busch	Chairman of Board	300.00	400.00
G. F. Moore	President	400.00	500.00
O. H. Rassfeld	Sec'y & Treas.	40.00	40.00
F. J. Degler	Auditor	105.00	105.00
Nagel & Kirby	Attorneys	333.33	333.33
		$1,478.33	1,778.33

Recapitulation.

Salaries of General Officers	19,540.98
Expenses Gen. Off.	1,336.24
Salaries & Expenses	.....
Clerks & Attendants	1,529.22
Stat'y & Ptg. Supplies	205.39
Misc. Office Expense	540.08
Advertising	450.00
Total	$23,601.91

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

THIS PAGE BOUND VERTICAL IN BOOK

Month.	Salaries gen. off.	Exp. gen. officers.	Salary & exp. clks. & attendants.	Sta. & prtg.	Misc. sup & exp.	Oper. int.	Res. for rate litigation.	Totals.
1910.								
Jul.	1,778.33	9.85	181.15	22.50	56.22	52.87	.....	2,100.92
Aug.	1445.00	52.40	193.13	26.32	23.70	62.03	.....	1,802.58
Sep.	2,111.67	27.40	109.98	22.50	64.85	96.24	.....	2,432.64
Oct.	1,778.33	39.65	125.68	28.44	215.60	106.64	5 000.00	7,294.34
Nov.	1,778.33	23.24	120.19	20.00	14.90	110.00	5,000.00	7,066.66
Dec.	1,778.33	54.65	336.63	20.00	105.65	154.49	5,000.00	7,449.75
1911.								
Jan.	1,778.34	3.60	68.99	20.00	15.88	150.64	.....	2,037.45
Feb.	1,778.33	61.70	68.98	20.00	26.46	151.25	.....	2,106.66
Mar.	1,778.33	25.65	45.83	21.50	10.50	165.91	.....	2,047.72
Apr.	1,761.33	34.60	42.88	36.16	7.05	1,050.07	.....	831.95
May	1,783.33	4.60	43.03	21.50	11.04	Law Exp.	.....	1,863.50
June	1,783.33	71.50	39.97	47.94	76.17	842.31	.....	2,765.34
	$21,332.98	408.84	1,376.44	210.98	627.96	842.31	15,000.00	39,799.51

Salaries of officers, fiscal year ending June 30, 1911.

A. Busch, V. P.	$400.00
A. A. Busch, Chairman of Board	400.00
G. F. Moore, President	500.00
O. H. Rassfeld	40.00
Auditor	105.00
Nagel & Kirby, Attys.	333.33
	$1,778.33

Recapitulation.

Salaries of Officers	$21,332.98
Expenses of Officers	408.84
Salaries & Expenses Clerks & Attendants	1,376.44
Stationery & printing	210.98
Misc. supplies & Office expenses	627.96
Rate Litigation Reserve	15,000.00
Legal Expense	842.31
	$39,799.51

MEMO: One-half of salary of general office clerk $30.00 per month for months of March, April, May & June, 1911, was charged to transportation under station expenses.

3 Interstate Commerce Commission. Docket No. 3151. Date 9/26/1912. Comp's Exhibit No. 75. Witness, Moore, enographer, J. V. L. F.

Requested by Mr. Colston.

Stenographer's notes, pages 423, 343 and 344, second hearing.

Docket No. 3151.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

4 Manufacturers' Railway Co.

alysis of Reserve for Acc-ued Depreciation Cr. Account of Tracks and Structures.

c'n reserve set up June 1910 5 % on $505,702.56 cost of road less right of way and real estate	25,285.13
July 1910	421.42
Aug. "	421.42
Sept. "	421.42
Oct. "	421.42
Nov. "	421.42
Dec. "	421.42
Jan. 1911	421.42
Feb. "	421.42
Mch. "	421.42
Apl. "	421.42
May "	421.42
June "	421.42
eruals for fiscal year ended June 1911 based on 1% of $505,702.56 per annum.	
July 1911	439.78
Aug. "	439.78
Sept. "	439.78
Nov. "	439.78
Dec. "	439.78
Reserve Dec. 31, 1911	32,980.85

MEMO: One-half of salary of general office clerk $30.00 per month for months of March, April, May & June, 1911, to [illegible]

Accruals for July to Dec. 1911 based on 1 % per annum $527,737.16.

Requested by Mr. Colston.

Stenog. notes page 423, second hearing, case 3151.

347
344

12,224.25
1,581.51

13,805.76

June 30 1910 property val.

505,702.56
13,805.76

519,528.32
117

517,926.81

1,581.51

Debit net..... 25,883
Credit..... ditto

5 % 505,702.56 cost of road less right.
W .W./ R. E.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, clerk.

975 (Copy.)

St. Louis, Mo., Dec. 21, 1910

Mr. C. Haile, Vice-Pres. & Traffic Mgr., M. K. & T. Ry. Co., Louis, Mo.

Dear Sir: Through you I desire to submit two tentative propo tions. In the preparation of them, I have attempted to outline cardinal points in agreements of this character.

Since having these agreements written, I have noticed a num of omissions that might be essential as safeguards to operative p ticipants. If your compa*b*y is in the least interested in either o or both, of these agreements, I would consider it a favor to have suggest any alterations which you might deem necessary in order make them absolutely impartial and fair to such parties as wo care to execute them.

We are submitting these tentative plans to a number of lines a do not wish to exclude any St. Louis road desiring to avail the selves of the privileges specified in them.

Within sixty days I will be in a position to announce the locati of a freight warehouse and somewhat of the plans that will gove its erection. For your information, I beg to advise, that I have

ady received from large Eastern concerns inquiries looking to-
ard securing space for warehouse purposes. You will understand
om the brief tentative plans submitted that our intention is to make
hat is commonly known as a "Union Freight House," located
uth of Poplar Street in the City of St. Louis, and it will be built
fficiently large to offer storage capacity on floors above the freight
arehouse. The entire building is to be constructed along modern
nes, scientifically appointed as to sanitary arrangements and with
nple elevator service.

Respectfully yours,

——— ———,
President & General Manager.

M.—H.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

(Copy.)

St. Louis, Mo., Dec. 21, 1910.

r. Edward O'Neil, Gen. Agt., C. R. I. & P. Ry. Co., St. Louis, Mo.

Dear Sir: Through you I desire to submit two tentative proposi-
ons. In the preparation of them, I have attempted to outline the
rdinal points in agreements of this character.

Since having these agreements written, I have noticed a number
omissions that might be essential as safeguards to operative par-
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not wish to exclude any St. Louis road desiring to avail them-
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Within sixty days I will be in a position to announce the location
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dy received from large Eastern concerns inquiries looking toward
uring space for warehouse purposes. You will understand from
brief tentative plans submitted that our intention is to make
at is commonly known as a "Union Freight House," located south
Poplar Street in the City of St. Louis, and it will be built suffi-
ntly large to offer storage capacity on floors above the freight
rehouse. The entire building is to be constructed along modern
es, scientifically appointed as to sanitary arrangements and with
ple elevator service.

Respectfully yours,

——— ———,
President & General Manager.

M.—H.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

977 (Copy.)

St. Louis, Mo., December 21, 1910.

Mr. C. R. Gray, Senior Vice-Pres., Frisco Lines, St. Louis, Mo.

Dear Sir: Through you I desire to submit two tentative propo tions. In the preparation of them, I have attempted to outline t cardinal points in agreements of this character.

Since having these agreements written, I have noticed a numb of omissions that might be essential as safeguards to operative p ticipants. If your company is in the least interested in either o or both, of these agreements, I would consider it a favor to have y suggest any alterations which you might deem necessary in ord to make them absolutely impartial and fair to such parties as wou care to execute them.

We are submitting these tentative plans to a number of lines an do not wish to exclude any St. Louis road- desiring to avail themsel of the privileges specified in them.

Within sixty days I will be in a position to announce the locati of a freight warehouse and somewhat of the plans that will gove its erection. For your information, I beg to advise, that I have already received from large Eastern concerns inquiries looking t ward securing space for warehouse purposes. You will understan from the brief tentative plans submitted that our intention is to ma what is commonly known as a "Union Freight House," located sou of Poplar Street in the City of St. Louis, and it will be built su ciently large to offer storage capacity on floors above the freig warehouse. The entire building is to be constructed along mode lines, scientifically appointed as to sanitary arrangements and wi ample elevator service.

Respectfully yours,

——— ———,

President & General Manager.

M.—H.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

978 (Copy.)

St. Louis, Mo., Feb. 7, 1911.

Mr. Edward Keane, Assistant Gen. Frt. Agt., Clover Leaf Line St. Louis, Mo.

Dear Sir: I am *bus*mitting two agreements: one for the use of union freight house to be erected by the Manufacturers' Railway o the property recently acquired north of Miller St., and another con tract for the use of certain delivery tracks established by this com pany.

We have submitted these agreements to roads showing a human interest in the destiny of the Manufacturers' Railway, and whil they may not in their present form be acceptable to all, we hav executed them with some of our friends without any radical change having been made.

COPY.

FORM NO. 1.

Manufactures

Rail way Company.

AGGREGATE STATEMENT

OF

TAXABLE PROPERTY

Owned, used or leased June 1, 1909.

Copy

Filed in office of State Auditor this 10,

day of January *A. D. 19* 10

Jno. P. Gordon
State Auditor

THE HUGH STEPHENS PRTG. CO. JEFFERSON CITY

STATE OF Missouri
City St. Louis } ss
County

C. F. Moore being duly sworn, upon his oath says he is the Pres. of the Manufactures Rail way Company, and that the within statement contains a true, full and complete list of all the property owned, used or leased by said company on the first day of June, 19 09, as fully as the same is required to be returned by section 9339, Revised Statutes of Missouri, and the actual cash value thereof.

G. F. Moore

Subscribed and sworn to before me this 29 day of December, 19 09.

(Seal).

Chas E. Koons Jr.

Notary Public.

My term expires May 6, 1913.

As far as your lines are concerned, you could use these facilities without violating any of the obligations you have undertaken with the Terminal Railroad Association, as your business must, of necessity, be handled by them before reaching us.

I will say frankly that these agreements have been discussed at your General Managers' Meeting in St. Louis, so that you may feel at liberty to mail them direct to Chicago. There is one point, however, that the General Managers' Association in St. Louis do not know, or will not in the future, know, and that is just who has executed these contracts and just what modifications have been made in order to make them acceptable to contracting parties.

Yours truly,

———— ————,
President & General Manager.

M.—H.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

979 (Copy.)

ST. LOUIS, Mo., January 27, 1911.

Traffic.

Mr. C. L. Hilleary, Gen. Agt., New York Central Lines, St. Louis, Mo.

DEAR SIR: Enclosed with this letter I am mailing outline of agreements, which probably might interest your lines.

Yours truly,

———— ————,
President & General Manager.

M.—H.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

980 Interstate Commerce Commission. Docket No. 3151. Date, 9-26-1912. Comp't's Exhibit No. 76. Witness, Moore. Stenographer, J. V. L. F.

Tender of Contracts.

Requested by Mr. Colston.

(See pages 370-371, stenographer's notes, second hearing.)

Case 3151.

(Here follows Form No. 1, marked pages 981 and 982.)

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

983 STATE OF MISSOURI,
County of Cole, ss:

Olga Meals, being duly sworn upon his oath, says he is Railroad Telegraph and Telephone Clerk in the office of State Auditor, and that the statements hereto attached, Form No. 1 and Form No. 2 are exact copies of Forms No. 1 and No. 2, containing statement of taxable property of the Manufacturers' Railway owned on the first day of June, 1908, and now on file in the Office of State Auditor.

OLGA MEALS.

Subscribed and sworn to before me this 2nd day of May, 1910. My commission expires Feb. 17th, 1913.

T. J. COPELAND,
Notary Public.

Sheet 1.

Interstate Commerce Commission. Docket No. 3151. Exhibit No. 1. Witness, Moore. 5-3-1910. Defendants, —— ——. Steno. Flannery.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

(Here follows Form No. 2, marked page 984.)

NAME	ADDRESS	NEAREST TEAM TRACKS	NUMBER OF BLOCKS TO HAUL	COST TO SHIPPER TO REACH RAIL CARRIERS WHICH IS NOT ABSORBED. (PER 100 pounds).
Louis Obert Brewing Company	27 S. Twelfth	Mfrs. Ry. 9 & Dorcas	3	3-1/2 to 4 cents
Wm. J. Lemp Brewing Association	12th & Cherokee	Uses cable line		$3.50 per car to connection with Iron Mt.Road.
INDEPENDENT BREWING ASS'N				
American Brewing Company	2825 S. Broadway	Mfrs. Ry. tks Bdwy & Ptzi	1-1/2	3-1/2 to 4 cents
National Brewing Company	18th & Gratiot	TRRA depot 16th Street	2-1/2	3-1/2 to 4 cents
Columbia Brewery.	20th & Madison	Wiggins at N. Market	17	4 cents
Phoenix Brewery	1724 La Fayette	8th & Cratiot tracks T.R.R.A.	13	4 cents
ST. LOUIS BREWING ASS'N.				
[illegible] Brew-	5 S.	TRRA 16th		

Compilation No-4

Columbia Brewery.	20th & Madison	Wiggins at N. Market	17	4 cents
Phoenix Brewery	1724 La Fayette	8th & Cratiot tracks T.R.R.A.	13	4 cents
ST. LOUIS BREWING ASS'N.				
Excelsior Brewery.	5 S. 17th St.	TRRA 16th St. team tracks	1-1/2	3-1/2 cents
Green Tree Brewery	9th & Sidney	Mfrs. Ry. 9th&Dorcas	1-1/2	4 cents
Hyde Park Bry. (beer plant) (or LaFayette)	18th & Cass	Wiggins Florida St.	18	4 cents
Hyde Park Bry. (malt house)	Salisbury & Florisant	Wiggins N. Market	23	4 cents
				4 cents

(malt house)	Florisant			4 cents
Grone Brewery	2219 Clark	Use TRRA 22 & Scott	3	
Heim Brewery	E. St. Louis	TRRA State St. team tk. E.St.Louis	11	4 cents

INTERSTATE COMMERCE COMMISSION
Docket No 315 Date 9/A 8/12
Staff
Exhibit No. 4 Witness Compton
Stenographer WS

Complaint No. 7

STATEMENT SHOWING INDUSTRIES LOCATED EXCLUSIVELY ON MANUFACTURERS' RAILWAY CO. SHOWING DATE THEY BUILT OR LOCATED ON THEIR PRESENT LOCATION AND DATE SWITCH OR SIDING OF MANUFACTURERS' RAILWAY WAS CONSTRUCTED INTO THEIR PLANT.

NAME	ADDRESS	DATE AT PRESENT LOCATION	DATE SWITCH OR SIDING OF MANUFACTURERS' RY CONSTRUCTED.
Fidel Ganahl Lumber Co.	Broadway, 2nd and Cherokee	Since 1900	1909
Bradbury Marble Co.	2nd & Convent	Since 1888	1909
#John Nooter Boiler Works.	2nd & Park	1910	1910
Western Foundry & Sash Weight Co.	2nd & Miller	Since 1887	1910
#St.Louis Lumber Co.	2nd & Lami	1911	Dec.1911
United States Arsenal	Main & Arsenal	Since 1821	

Bradbury Marble Co.	[illegible]		
#John Nooter Boiler Works.	2nd & Park	1910	1910
Western Foundry & Sash Weight Co.	2nd & Miller	Since 1887	1910
#St.Louis Lumber Co.	2nd & Lami	1911	Dec.1911
United States Arsenal	Main & Arsenal	Since 1821	
ø%Schroeder Coal Co.	3d and Dorcas	About 1900	%
øxMorris & Co.	Broadway & Pestalozzi	1902	About 1902
øxSt.Louis Dressed Beef & Prov. Co.	Broadway & Pestalozzi	About 1902	About 1902
B.Klauber & Sons.	2nd & Louisa	1911	1911
P.Heibel Sons	2nd & Barry	1912	1912

INTERSTATE COMMERCE COMMISSION
Docket No. 3151 Date 9/28/12
Dept No 7 Witness
Number [illegible] Compton

Located on ground of Manufacturers' Ry. Co.

ø Located on ground of Anheuser-Busch Brewing Association.

x These are coolers, smaller coolers being located in various parts of the city to conveniently distribute the meat ~~the~~ to retail butchers in that part of the city.

% Have a yard where they use Manufacturers Railway to distribute coal in that part of the city; have other yards similar in other parts of the city.

Exhibit No. 8

List of manufacturers and shippers located on the Manufacturers Railway that are served exclusively by industrial tracks, showing character of their business.

NAME	CHARACTER OF BUSINESS	HOW SERVED	LOCATION
Fidel-Ganahl Lumber Co.	Lumber	Tracks of Mfrs Railway only.	Brdy, 2nd & Cherokee
Bradbury Marble Company.	Marble	"	2nd and Convent.
John Nooter Boiler Works.	Boilers.	"	2nd and Park.
Western Foundry & Sash Weight Co.	Foundry	"	2nd and Miller
St.Louis Lumber Company.	Lumber	"	2nd and Lami.

Fidel-Ganahl Lumber Co.	Lumber	Tracks of Mfrs Railway only.	Brdy, 2nd & Cherokee
Bradbury Marble Company.	Marble	"	2nd and Convent.
John Nooter Boiler Works.	Boilers.	"	2nd and Park.
Western Foundry & Sash Weight Co.	Foundry	"	2nd and Miller.
St.Louis Lumber Company.	Lumber	"	2nd and Lami.
United States Arsenal.	-----	"	Main and Arsenal.
Morris and Company.	Cooler	"	Brdy. and Pestalozzi.
St.Louis Dr.Beef & Prov. Co.	Cooler.	"	Brdy. and Pestalozzi.
Schroeter Coal Company.	Retail Coal Yd.	"	3d and Dorcas.
P. Klauber & Sons.	Scrap Iron.	"	2nd and Louisa.
F.Heibel Sons	Mnfgr. Paper Boxes	"	2nd & Barry

INTERSTATE COMMERCE COMMISSION
Docket No. 3151 Date 9/28/12
Exhibit No 8 Witness
Stenographer WFS Compton

Compton 9

STATEMENT SHOWING SHIPPERS LOCATED EXCLUSIVELY ON THE MANUFACTURERS' RY. SHOWING THEIR LOCATION; CHARACTER OF BUSINESS; SWITCH CONNECTIONS; AMOUNT OF SWITCHING NECESSARY TO REACH CERTAIN RAIL CARRIERS; LIST OF REPRESENTATIVE COMPETITORS NOT HAVING ANY RAIL CONNECTION BUT HAVING TO TEAM THEIR FREIGHT TO REACH RAIL CARRIERS.

	Name	Location	Character of Business	Switching charge to point conn. with StLTFR StLIM&S Ry. Charge tariff	Drayage charge borne by shipper to ar from team tracks most generally used. Location	Distance in blocks	Cost. approx. in cents per cwt.
1	Fidel-Ganahl Lumber Co.	Bdwy. 2nd &Cherokee	Lumber yards				
2	Bradbury Marble Co.	2nd and Convent	Marble Works				
3	John Nooter Boiler Wks.	2nd and Park	Boiler Works				
4	Western Fdy & Sash Wt.Co	2nd and Miller	Sash wts. & Foundry				
	St. Louis Lumber Co.	2nd and Lami	Lumber yards				
	United States Arsenal	Main and Arsenal	U. S. Arsenal	$2.00 Manufacturers Ry.Co's trf. No.1 I.C.C. No.1, 12/1/11			
	xMorris & Company (cooler)	Bdwy. and Pestalozzi	cooler				
	[illegible]	[illegible]					

ESTATE COMMERCE COMMISSION
No. 3157
Date 9/28/12
No. 9
Witness
Compton

	[illegible] Co.	[illegible]	[illegible]				
2	Bradbury Marble Co.	2nd and Convent	Marble Works				
3	John Nooter Boiler Wks.	2nd and Park	Boiler Works				
4	Western Fdy & Sash Wt.Co	2nd and Miller	Sash wts. & Foundry				
	St.Louis Lumber Co.	2nd and Lami	Lumber yards				
	United States Arsenal	Main and Arsenal	U. S. Arsenal	$2.00 Manufacturers Ry.Co's trf. No.1 I.C.C. No.1, 12/1/11			
	xMorris & Company (cooler)	Bdwy. and Pestalozzi	cooler				
	xSt.Louis Dressed Beef & Prov.Co. (cooler)	Bdwy. and Pestalozzi	cooler				
	%Schroeder Coal Co.	3rd and Dorcas	coal				
	B.Klauber & Sons	2nd and Louisa	scrap iron				
1	Prendergast Lumber Co.	12th and Market	Lumber yards		16th St. Term.RR Assn.Yds.	9	5
2	Pickle Marble & Granite Company	1901 N. Broadway	Marble Works.		Wiggins N.Market	6	2-1/2
3	John O'Brien Boiler Wks.	11th and Mullanphy	Boiler Works		MK&T Dep. Bdwy. & O'Fallon	5	4
4	J.P.Materne Mfg.Co.	16th & Gratiot	Sash Weights		12th St. TRRA Yds.	10	3
1	Boeckler Lumber Co.	Sarah & Easton	Lumber Yards		Mer.Br. West Belt Easton Av	16	5

x These are coolers, smaller coolers being located in various partsof the city to conveniently distribute meat to retail butchers in that part of city

INTERSTATE COMMERCE COMMISSION
Docket No. 3157
Exhibit No. 9
Stenographer 107
Date 9/28/12
Witness

CHARTS

TOO LARGE FOR FILMING

983 Louisville & Nashville Railroad Company.

Office of the Car Accountant.

LOUISVILLE, KY., January 11th, 1911.

Statement of Earnings of Refrigerator Cars Belonging to the St. Louis Refrigerator Car. Co. (Anheuser-Busch Series) on per diem Basis. @ 35¢ per Day, and on a Mileage Basis of ¼¢ per Day and 1¢ per Day, Months of August, September, and October. 1911.

Month.	Average miles per car per day.	Average earnings per car per day @ ¼¢ rate.	Average earnings per car per day @ 1¢ rate.	Increase earnings per car per day 1¢ rate. over ¼¢.	Increase earnings per car per day ¼¢ rate over per diem rate.	Increase earnings per car per day 1¢ rate over per diem rate.
1911.						
August	96	$.70	$.96	$.26	$.35	$.61
September	104	.78	1.04	.26	.43	.69
October	107	.80	1.07	.27	.45	.72

Interstate Commerce Commission. Docket No. 3151. Date, 9/26/12. Deft. Exhibit No. 2. Witness, Phelps. Stenographer, A. S.

(Here follow tabular statements, marked pages 986 to 995.)

Interstate Commerce Commission. Docket No. 3151. Date 9/28/12. D
Exhibit No. 14. Witness, Compton. Stenographer, W. S.

Scale Showing Relative Value of Inches and Parts thereof in Miles and Parts Thereof.

1/8	inch	equals	.091	miles.	5½	"	"	3.97	"
¼	"	"	.182	"	5⅝	"	"	4.06	"
⅜	"	"	.273	"	5¾	"	"	4.15	"
½	"	"	.364	"	5⅞	"	"	4.24	"
⅝	"	"	.455	"	6	"	"	4.33	"
¾	"	"	.546	"	6⅛	"	"	4.42	"
⅞	"	"	.637	"	6¼	"	"	4.51	"
1	"	"	.727	"	6⅜	"	"	4.60	"
1⅛	inches	"	.818	"	6½	"	"	4.69	"
1¼	"	"	.909	"	6⅝	"	"	4.78	"
1⅜	"	"	1.000	"	6¾	"	"	4.87	"
1½	"	"	1.09	"	6⅞	"	"	4.96	"
1⅝	"	"	1.18	"	7	inches	equals	5.05	miles.
1¾	"	"	1.27	"	7⅛	"	"	5.14	"
1⅞	"	"	1.36	"	7¼	"	"	5.23	"
2	"	"	1.45	"	7⅜	"	"	5.32	"
2⅛	"	"	1.54	"	7½	"	"	5.41	"
2¼	"	"	1.63	"	7⅝	"	"	5.50	"
2⅜	"	"	1.72	"	7¾	"	"	5.59	"
2½	"	"	1.81	"	7⅞	"	"	5.68	"
2⅝	"	"	1.90	"	8	"	"	5.77	"
2¾	"	"	1.99	"	8⅛	"	"	5.86	"
2⅞	"	"	2.08	"	8¼	"	"	5.95	"
3	"	"	2.17	"	8⅜	"	"	6.04	"
3⅛	"	"	2.26	"	8½	"	"	6.13	"
3¼	"	"	2.35	"	8⅝	"	"	6.22	"
3⅜	"	"	2.44	"	8¾	"	"	6.31	"
3½	"	"	2.53	"	8⅞	"	"	6.40	"
3⅝	"	"	2.62	"	9	"	"	6.49	"
3¾	"	"	2.71	"	9⅛	"	"	6.58	"
3⅞	"	"	2.80	"	9¼	"	"	6.67	"
4	"	"	2.89	"	9⅜	"	"	6.76	"
4⅛	"	"	2.98	"	9½	"	"	6.85	"
4¼	"	"	3.07	"	9⅝	"	"	6.94	"
4⅜	"	"	3.16	"	9¾	"	"	7.03	"
4½	"	"	3.25	"	9⅞	"	"	7.12	"
4⅝	"	"	3.34	"	10	"	"	7.21	"
4¾	"	"	3.43	"	10⅛	"	"	7.30	"
4⅞	"	"	3.52	"	10¼	"	"	7.39	"
5	"	"	3.61	"	10⅜	"	"	7.48	"
5⅛	"	"	3.70	"	10½	"	"	7.57	"
5¼	"	"	3.79	"	10⅝	"	"	7.66	"
5⅜	"	"	3.88	"	10¾	"	"	7.75	"

10⅞	"	"	7.84	"	12½	"	"	9.01	"
11	"	"	7.93	"	12⅝	"	"	9.10	"
11⅛	"	"	8.02	"	12¾	"	"	9.19	"
11¼	"	"	8.11	"	12⅞	"	"	9.28	"
11⅜	"	"	8.20	"	13	"	"	9.37	"
11½	"	"	8.29	"	13⅛	"	"	9.46	"
11⅝	"	"	8.38	"	13¼	"	"	9.55	"
11¾	"	"	8.47	"	13⅜	"	"	9.64	"
11⅞	"	"	8.56	"	13½	"	"	9.73	"
12	"	"	8.65	"	13⅝	"	"	9.82	"
12⅛	"	"	8.74	"	13¾	"	"	9.91	"
12¼	"	"	8.83	"	13⅞	"	"	10.00	"
12⅜	"	"	8.92	"					

97

14	inches	equals	10.09	miles.	17½	inches	equals	12.61	miles.
14⅛	"	"	10.18	"	17⅝	"	"	12.70	"
14¼	"	"	10.27	"	17¾	"	"	12.79	"
14⅜	"	"	10.36	"	17⅞	"	"	12.88	"
14½	"	"	10.45	"	18	"	"	12.97	"
14⅝	"	"	10.54	"	18⅛	"	"	13.06	"
14¾	"	"	10.63	"	18¼	"	"	13.15	"
14⅞	"	"	10.72	"	18⅜	"	"	13.24	"
15	"	"	10.81	"	18½	"	"	13.33	"
15⅛	"	"	10.90	"	18⅝	"	"	13.42	"
15¼	"	"	10.99	"	18¾	"	"	13.51	"
15⅜	"	"	11.08	"	18⅞	"	"	13.60	"
15½	"	"	11.17	"	19	"	"	13.69	"
15⅝	"	"	11.26	"	19⅛	"	"	13.78	"
15¾	"	"	11.35	"	19¼	"	"	13.87	"
15⅞	"	"	11.44	"	19⅜	"	"	13.96	"
16	"	"	11.53	"	19½	"	"	14.05	"
16⅛	"	"	11.62	"	19⅝	"	"	14.14	"
16¼	"	"	11.71	"	19¾	"	"	14.23	"
16⅜	"	"	11.80	"	19⅞	"	"	14.32	"
16½	"	"	11.89	"	20	"	"	14.41	"
16⅝	"	"	11.98	"	20⅛	"	"	14.50	"
16¾	"	"	12.07	"	20¼	"	"	14.59	"
16⅞	"	"	12.16	"	20⅜	"	"	14.68	"
17	"	"	12.25	"	20½	"	"	14.77	"
17⅛	"	"	12.34	"	20⅝	"	"	14.86	"
17¼	"	"	12.43	"	20¾	"	"	14.95	"
17⅜	"	"	12.52	"	20⅞	"	"	15.04	"

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, clerk.

EXHIBIT 2.

Filed Mar. 11, 1915. W. W. Nall, Clerk.

United States District Court.

No. 4384.

MANUFACTURERS' RAILWAY COMPANY

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Exhibit No. 2 to the Testimony of J. W. Kendrick. 2/15/1915. M. J. C. Byron T. Babbitt, Special Examiner.

ACCOUNT 2.

Land for Transportation Purposes—Deeded Land.

3 Sheets—Sheet 1.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
2	Land for Transportation Purposes—Deeded Land.						
	River Yard	Sq. ft.	281,317	$1.00	$281,317.00		
	Second Street:						
	Trudeau Team Tracks	"	28,495	1.00	28,495.00		
	Park Av. Yard	"	104,282	1.50	156,423.00		
	Rutger St. Station and Team Tracks	"	25,157	1.50	37,735.50		
	Stock Yard	"	42,758	.50	21,379.00		
	*Arsenal Yard	"	35,920	....	32,000.00		
					$557,349.50		

* The easement from the United States for the use of this property is now in the name of the Anheuser-Busch Brewing Association, although the property was paid for by the Manufacturers' Railway. A bill is now in preparation for the purpose of transferring the easement title by Congressional enactment to the Manufacturers' Railway. The proposed transfer has the approval of the War Department.

Busch Brewing Association, [illegible] the easement title by Congressional [illegible] as the [illegible] preparation for the purpose of transferring the easement title by Congressional enactment to the [illegible] The proposed transfer has the approval of the War Department.

1000

ACCOUNT 2.

Land for Transportation Purposes—Leased Land.

3 Sheets—Sheet 2.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
2	Land for Transportation Purposes—Leased Land.						
	* High Line	Sq. ft.	1,380	$2.00	$2,760.00		
	† River Yard	"	133,921	1.00	133,921.00		
	† " "	"	161,592	1.50	242,388.00		
	* First St. Yard	"	259,584	1.50	389,376.00		
	* Shipping "	"	203,984	1.75	356,972.00		
	* St. Louis Ref'g Car Company	"	16,896	1.75	29,568.00		
	* Broadway Yard	"	56,160	1.75	98,280.00		
	* Seventh St. Yard	"	19,460	2.00	38,920.00		
	* Ninth St. "	"	29,424	1.75	51,492.00		
	Second Street:						
	* Dorcas & 2nd	"	23,221	1.50	34,831.50		
	‡ Block 201, Rutger St. Sta. & Team Track	"	6,357	....	1,500.00		
	Dorcas Line:						
	* Foot of Dorcas	"	10,220	1.50	15,330.00		
	* Lyon St. Yard	"	28,144	1.75	49,252.00		
	* 11th St. "	"	96,320	1.75	168,560.00		
	* 11th St. "	"	29,520	1.50	44,280.00		
	* 13th St. "	"	64,080	1.50	96,120.00		
	* Dorcas St. Line—Main	"	1,056	2.00	2,112.00		
					$1,755,662.50		

† Leased from the City of St. Louis.
* Anheuser-Busch Brewing Association Lease.
‡ Leased from Board of Education of St. Louis.

ACCOUNT 2.

Land for Transportation Purposes—Land Used under Franchise.

3 Sheets—Sheet 3.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
2	**Land for Transportation Purposes.**						
	* Land Used under Franchise.						
	High Line:						
	River Yard	Sq. ft.	36,737	$1.00	$36,737.00		
	1st St. "	"	1,820	1.00	1,820.00		
	Alley, Blk. 883	"	652	2.00	1,304.00		
	" " 884	"	690	2.00	1,380.00		
	In 2nd Street	"	2,100	1.50	3,150.00		
	" Broadway	"	960	2.00	1,920.00		
	" 7th Street	"	720	2.00	1,440.00		
	" 9th "	"	7,668	2.00	15,336.00		
	" 9th "	"	3,396	1.00	3,396.00		
	Second Street:						
	Main Line	"	22,508	.75	16,881.00		
	" "	"	95,696	1.00	95,696.00		
	" "	"	66,921	1.50	100,381.50		
	City Blk. 1789	"	180	.75	135.00		
	" " 1791	"	345	.75	258.75		
	In Barton St.	"	1,616	1.00	1,616.00		

In Barton St.	"	1,818	[illegible]		
" 3rd "	"	720	1.00	720.00	
" Park Av.	"	8,052	1.50	12,078.00	
" Kosciusko St.	"	1,380	1.50	2,070.00	
" Rutger St.	"	1,840	1.50	2,760.00	
" Merchant St.	"	4,760	1.50	7,140.00	
Dorcas & 2nd St.	"	2,484	1.50	3,726.00	
Dorcas Street:					
Ft. of Dorcas St.	"	21,086	1.50	31,629.00	
Main Line	"	16,796	1.75	29,393.00	
" "	"	7,284	2.00	14,568.00	
In 9th St.	"	756	2.00	1,512.00	
" 11th "	"	21,068	1.50	31,602.00	
" 12th "	"	7,216	1.50	10,824.00	
Block 1409	"	1,684	1.75	2,947.00	
" 1410	"				
" 2018	"	1,854	1.75	3,244.50	
" 2019	"				
				435,664.75	Franchises
				1,755,662.50	Leased Land
				557,349.50	Deeded "
Grand Total				$2,748,676.75	

* The value of Land Used Under Franchise is not included in any of the Summaries of this valuation.

Grading.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
3	**Grading.**						
	Excavation	Cu. Yd.	16,302	$.30	$4,890.60		
	"	"	2,930	.54	1,582.20		
	"	Lin. F.	23,290	1.00	23,290.00		
	"	Cu. Yd.	107,714	.46	49,548.44		
	"	"	1,556	.75	1,167.00		
	"	"	1,771	.825	1,461.08		
	"	"	6,900	.855	5,899.50		
	"	"	13,173	1.02	13,436.46		
	"	"	3,704	1.00	3,704.00		
	"	"	1,377	.90	1,239.30		
3	Clearing				105.00		
3	**Masonry Retaining Walls.**						
	Large Section	Cu. Yd.	2,806.4	$7.00	$19,644.80		
	Small "	"	170.5	10.00	1,705.00		
	Curve "	"	1,113.4	10.00	11,134.00		
	Parapet Walls	Lin. F.	569.5	2.25	1,281.38		
	Hand Railing	"	1,510	....	2,146.90		
	Stone	Cu. Yd.	61	10.00	610.00		
	Foundation Excavation	"	1,357	.50	678.50		

Stone	"	1,357	.50			
Foundation Excavation						
Timber Blk. Hd.	M.B.M.	1	36.00	36.00		
Grillage	"	7	36.00	252.00		
Rip Rap, Hand Laid	Cu. Y.	46	2.50	120.00		
Total				$143,932.16		

Solidification of Roadbed.

					Appreciation.
Cu. Yd.	142,982	$0.03	.....	....	$4,289.46
"	10,923	0.026	.....	....	284.00
"	13,173	0.023	.....	....	302.98
			$4,876.44	....	$4,876.44
Appreciation					
Present value			$148,808.60		

1003

ACCOUNT 6.

Bridges, Trestles & Culverts.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
6	Bridges, Trestles and Culverts.						
	Concrete, plain	Cu. Yds.	264	$7.00	$1,848.00	None	.....
	" Reinforced	"	107	8.50	909.50	None	.....
	Reinforcing Bars	Lbs.	7,000	.025	175.00	None	.....
	Structural Steel	"	2,000	.04	80.00	50	$40.00
	Bridge Timber	M.B.M.	21	45.00	945.00	75	708.75
	Foundation Excavation—Dry	Cu. Yd.	30	.50	15.00	None	.....
	Foundation Excavation—Wet	Cu. Yd.	140	1.50	210.00	None	.....

Concrete Viaduct.						
Concrete, plain	Cu. Yd.	233				
" Reinforced	"	2,676				
" Piles	Lin. ft.	4,492				
Steel Angles and Rods	Lbs.	127,000	....	$53,262.25	....	50.00
Reinforcing Bars	"	282,000				
Metal Lath and Plaster	Sq. Yd.	2,350				
Cinder Fill	Cu. Yd.	8,700				
Steel Viaduct.						
Structural Steel, foundation, bolts and railing	Lbs.	1,432,000	....	54,779.54	7	3,834.57
Total				$112,224.29		$4,633.32
Depreciation				4,633.32		
Present value				$107,590.97		

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ACCOUNT 8.

Ties.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
8	**Ties.**						
	Oak Ties	Each	45,224	$0.61	$27,586.64	45	$12,413.99
	Treated Ties	"	4,868	.81	3,943.08	53	2,089.83
	Switch Ties	M.B.M.	495	24.00	11,880.00	45	5,346.00
	Crossing "	"	....	24.00	808.00	45	363.60
	Bridge "		47	45.00	2,115.00	45	951.75
				2.45	8,457.40	9	761.17

Crossing	"		"	47	45.00	2,115.00	
Bridge	"						
Steel	"		Ea.	3,452	2.45	8,457.40	9 761.17
"	"		"	753	1.10	828.30	17 140.81
" Sw.	"		"			829.00	9 74.61
		Total				$56,447.42	$22,141.76
		Depreciation				22,141.76	
		Present value				$34,305.66	

1005

ACCOUNT 9.

Rail.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
9	Rail.						
	56 lb.	Gr. Ton	116.27	$29.65	$3,447.41	60	$1,231.30
	60 lb.	"	65.32	29.65	1,936.74	60	691.74
	85 lb.	"	2,331.30	29.65	69,123.05	12	4,937.69
	86 lb.	"	14.56	49.90	726.54	50	275.91
	100 lb.	"	33.96	29.65	1,006.91	12	71.93
	141 lb.	"	304.64	49.90	15,201.54	20	2,309.17
	Total				$91,442.19		$9,517.74
	Depreciation				9,517.74		
	Present value				$81,924.45		

The depreciation per cent shown is on the wearing value only. The wearing value of "T" rail is cost new, $29.65, less scrap value of $12.00 per gross ton=$17.65 per gross ton. The wearing value of 141 lb. and 86 lb. girder rail is cost new, $49.90, less scrap value of $12.00 per gross ton = $37.90 per gross ton.

Other Track Material.

Three Sheets—Sheet 1.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
10	Other Track Material.						
	Switch Points, 85#	7½′	5	$20.50	$102.50	15	$15.38
	" " "	10′	100	24.10	2,410.00	15	361.50
	" " "	12½′	44	30.50	1,342.00	15	201.30
	" " "	15′	39	34.50	1,345.50	15	201.83
	" " 60#	15′	1	28.00	28.00	35	9.80
	Switch Stands, Pony	....	5	17.00	85.00	5	4.25
	" " Ground Throw	....	124	10.00	1,240.00	5	62.00
	" " Lever	....	4	6.00	24.00	5	1.20
	" " Center Throw	....	39	7.75	302.25	5	15.11
	" " Elliott	....	11	225.00	2,475.00	5	123.75
	" " Covers	....	17	2.00	34.00	5	1.70
	" " Long Rods	....	6	2.00	12.00	5	.60
	Frogs, 85#	# 4	15	22.60	339.00	12	40.68
	" "	# 4½	16	23.60	377.60	12	45.31
	" "	# 5	63	23.60	1,486.80	12	178.42
	" "	# 6	66	25.00	1,650.00	12	198.00
	" "	# 7	12	26.00	312.00	12	37.44
	" 60#	# 7	1	20.00	20.00	35	7.00
	" 85#	# 8	8	27.00	216.00	12	25.92
	" "	# 9	1	27.00	27.00	12	3.24
		#10	6	28.00	168.00	12	20.16

"	85#	# 8	1	27.00	27.00	12	3.24
"	"	# 9	6	28.00	168.00	12	20.16
"	"	#10	1	35.00	35.00	12	4.20
"	" Spring	....	247	7.00	1,729.00	10	172.90
Guard Rail,	85#, Plain	....	2	6.00	12.00	25	3.00
"	56# "	....	126	12.00	1,512.00	10	151.20
"	" 85#, Clamp	....					
Carried forward					$17,284.65		$1,885.89

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ACCOUNT 10.

Other Track Material.

NOTE.—Wearing Value of Joints is 2/3 of cost new. Depreciation per cent is of Wearing Value.

Three Sheets—Sheet 2.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
10	Other Track Material (Continued).						
	Brought Forward				$17,284.65		$1,885.89
	Joints complete for:						
	56 lb. Rail	Each	378	0.54	204.12	50	68.04
	60 lb. "	"	228	.54	123.12	50	41.04
	85 lb. "	"	6,552	.93	6,093.36	10	393.12
	86 lb. "	"	34	1.07	36.38	50	12.24
	100 lb. "	"	65	1.15	74.75	10	5.20
	141 lb. "	"	445	3.80	1,691.00	10	111.25

1009 ACCOUNT 11.

Ballast.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
11	Ballast.						
	Concrete	Lin. ft.	18,160	$1.40	$25,424.00	None	
	Stone	Cu. Yd.	8,833	.87	7,684.71	None	
	" —team haul	"	8,146	1.15	9,367.90	None	
	Gravel	"	7,558	.66	4,988.28	None	
	Cinder	"	24,082	.25	6,020.50	None	
	Total				$53,485.39		
	Depreciation				.....		
	Present value				$53,485.39		

1010 ACCOUNT 12.

Track Laying and Surfacing.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
12	Track Laying and Surfacing.						
	Rail under 85#.						
	In Cinder Ballast	Lin. F.	6,419	$.25	$1,604.75	None	
	85# Rail and Over.						
	In Concrete "	Lin. F.	17,100	.49	8,349.00	None	
	In Cinder "	"	53,608	.32	17,154.56	None	

In Concrete "	Lin. F.	17,100	.40	6,840.00	None
In Stone & Gravel Ballast	"	53,608	.32	17,154.56	None
In Cinder Ballast	"	26,514	.27	7,158.78	None
In Macadam "	"	10,602	.60	6,361.20	None
On Viaduct	"	2,156	1.00	3,156.00	None
Turnouts	Each	149	30.00	4,470.00	None

Special Work.

	....	.....	.....	300.00	None
High Line	....	.....	.....	906.00	None
Dorcas St. Line	....	.....	.....	150.00	None
Second St. Line	....	.....	.....	410.00	None
First St. Yard	....	.....	.....	185.00	None
St. Louis Ref. Car Co. Tracks	....	.....	.....	1,828.70	None
Ninth St. Yard	....	.....	.....	370.00	None
Foot of Dorcas St. Tracks	....	.....	.....	385.00	None
Lyon St. Yard	....	.....	.....	500.00	None
Eleventh St. Yard	....	.....	.....	185.00	None
2nd & Dorcas Yard	....	.....	.....	40.00	None
Rutger St. Yard	....	.....	.....	100.00	None
2nd St. Industrial Tracks	....	.....	.....		

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Storing and Handling Track Material.

Track Material	G. T.	4,093	$.40	1,637.20	None
Ties	Each	58,941	.03	1,768.23	None
Total				$54,510.42	
Depreciation				None	
Present value				$54,510.42	

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ACCOUNT 16.

Station and Office Buildings.

Two Sheets—Sheet 2.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
16	Station and Office Buildings (Continued).						
	Brought Forward				$124,467.45		$15,646.74
	Sewers.						
	6" laid only	Lin Ft.	225	$0.20	$45.00	None	
	8" " "	"	160	.25	40.00	None	
	10" " "	"	335	.35	117.25	None	
	12" " "	"	150	.40	60.00	None	
	6" complete	"	3,515	.70	2,460.50	None	
	8" "	"	914	.75	685.50	None	
	10" "	"	262	.85	222.70	None	
	12" "	"	150	1.00	150.00	None	
	Manholes	Each	9	60.00	540.00	9	48.60
	Catch Basins	"	29	25.00	725.00	9	65.25
	Inlets	"	9	5.00	45.00	9	4.05
	Gratings	"	6	3.00	18.00	20	3.60

Miscellaneous.

Gratings .....

Miscellaneous.

Office Furniture	....	.....	.....	4,416.19	25	1,104.05.
Platform Timber	M.B.M.	32	45.00	1,440.00	50	720.00
Retaining Wall	Cu. Yd.	32	10.00	320.00	None	
Railing	Lin.Ft.	63	1.25	78.75	7	5.51
Total				$135,831.34		$17,597.80
Depreciation				17,597.80		
Present value				$118,233.54		

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ACCOUNT 18.

Water Stations.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
18	Water Stations.						
	Water Cranes.						
	At Engine House—Installed	....	.....	.....	$410.00	3	$12.30
	At Dorcas and 9th St., "	....	.....	.....	410.00	3	12.30
	Total				$820.00		$24.60
	Depreciation				24.60		
	Present value				$795.40		

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ACCOUNT 19.

Fuel Stations.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
19	**Fuel Stations.**						
	Station near Engine House.						
	Coaling Shed	....	.....	.....	$429.74	2	8.59
	Coal Storage Bin	....	.....	.....	749.30	8	59.94
	Timber Bulkhead	....	.....	.....	252.00	8	20.16
	Total				$1,431.04		$88.69
	Depreciation				88.69		
	Present value				$1,342.35		

ACCOUNT 17.

Roadway Buildings.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
17	Roadway Buildings.						
	Store Room (Old engine house).....	....	.....	.....	$5,687.53	20	$1,137.51
	Tool House—West end viaduct.....	....	.....	.....	190.00	15	28.50
	" " First St. Yard.....	....	.....	.....	300.00	None	
	Car Body Cement store house.....	....	.....	.....	50.00	None	
	" " Tools, River St. Yard.....	....	.....	.....	50.00	None	
	Total				$6,277.53		$1,166.01
	Depreciation				1,166.01		
	Present value.....				$5,111.52		

ACCOUNT 20.

Shops & Engine Houses.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
20	**Shops and Engine Houses.**						
	Engine House & Machine Shop.						
	Building	....	.....	.....	$83,075.47	1	$830.75
	Miscellaneous Additions	....	.....	.....	802.36	None	
	Heating Plant	....	.....	.....	9,926.95	2	198.54
	Lighting, Installation & Wire	....	.....	.....	7,632.61	2	152.65
	Water Supply	....	.....	.....	891.32	1	8.91
	Smoke Jacks	....	.....	.....	1,656.00	2	33.12
	Lockers	....	.....	.....	160.00	2	3.20
	Switchboard and Lights	....	.....	.....	716.12	2	14.32
	Transfer Table	....	.....	.....	5,311.28	2	106.23
	Cinder Pit and Depressed Track	....	.....	.....	3,212.55	1	32.13
	Store Room and Office Building.						
	Building	....	.....	.....	9,647.55	1	96.48
	Heating	....	.....	.....	498.00	2	9.96
	Material Racks	....	.....	.....	300.00	2	6.00
	Fixtures in Basement	....	.....	.....	524.80	None	

Fixtures in Basement.....

Sand House.

Building				189.10	2	3.78
Stove and Screen				86.00	3	2.58
Total				$124,630.09		$1,498.65
Depreciation				1,498.65		
Present value				$123,131.44		

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ACCOUNT 30.

Power Substation Building.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
30	Power Substation Buildings.						
	Transformer Station Building.....	....	.....	.....	$1,512.00	1	$15.12
	Total				$1,512.00		
	Depreciation				15.12		
	Present value				$1,496.88		

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ACCOUNT 35.

Miscellaneous Structures.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
35	Miscellaneous Structures.						
	Track Scale	Each	1	$2500.	$2,500.00	15	$375.00
	Stock Pens at Zepp Street.						
	Timber, including iron	M.B.M.	7	$45.00	$315.00	15	$47.25
	Total				$2,815.00		$422.25
	Depreciation				422.25		
	Present value				$2,392.75		

ACCOUNT 36.

Paving.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
36	**Paving.**						
	Granite Block on Concrete	Sq. Yd.	7,064	$2.50	$17,660.00	10	$1,766.00
	Brick	"	2,528	1.75	4,424.00	14	619.36
	Macadam	"	503	.50	251.50	None	
	Creosoted Block	"	292	3.40	992.80	16	158.85
	Concrete	"	204	1.50	306.00	6	18.36
	Planking	M.B.M.	51	35.00	1,785.00	50	892.50
	Catch Basin	Each	1	25.00	25.00	9	2.25
	Total				$25,444.30		$3,457.32
	Depreciation				3,457.32		
	Present value				$21,986.98		

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ACCOUNT 37.

Roadway Machines.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
37	**Roadway Machines.**						
	Push Cars	Each	2	$22.50	$45.00	None	
	" "	"	1	22.50	22.50		$7.50
	Total				$67.50		$7.50
	Depreciation				7.50		
	Present value				$60.00		

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ACCOUNT 38.

Roadway Small Tools.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
38	**Roadway Small Tools.**						
	Shovels, picks, bars, rail tongs, jacks, drills and miscellaneous track tools....	....	.....	.....	$805.29	25	$201.32
	Total				$805.29		$201.32
	Depreciation				201.32		
	Present value				$603.97		

Account 44—Shop Machinery.

Present value..... $603.97

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Account 44—Shop Machinery.

Pattern Shop.

	Item.	Maker.	Age (years).	Cost.	Depreciation. Per cent.	Depreciation. Amount.	Present value.
1	No. 1 "Variety" Saw Bench, with boring attachment, individual drive. Equipped with one saw and one No. 3 "Jones" saw guard. No countershaft. Operated by one Wagner 5 H. P. 220-volt, 3-phase A. C. motor, 1440 R. P. M., equipped with fuse terminals, switch and pulleys.	Amer. Woodworking Machinery Company.....	1	$247.51	2	$4.95	$242.56
1	No. 802 Planer and Jointer; No. 1 16-inch, with safety cylinder, one pair knives and bevel gauge. Without countershaft. Operated by one Wagner 5 H. P., 220-440 volt, 25-cycle, 3-phase A. C. motor, with rails, one PST switch and fuse terminals.	Amer. Woodworking Machinery Company.....	1	$257.84	2	$5.15	$252.69
1	No. 6-F "Fox" Hand Trimmer, No. 17925.....	Amer. Woodworking Machinery Company.....	1	$130.00	2	$2.60	$127.40
1	Fig. 514, No. 10 Band Saw; 36-inch, with iron tilting table, "Mohawk" guide, one hand rip gauge, ½" blade, set of brazing tools and wrenches, equipped with ball bearings, iron guard doors for lower wheels and wire guard for top wheel. Operated by 1 Roth 3 H. P. 220-440 volt 25-cycle, 3-phase, 600-R. P. M. motor, attached to and made part of machine.	Amer. Woodworking Machinery Company	1	$374.00	2	$7.48	$366.52
1	Pattern Maker's Lathe; 20-inch, 12-foot bed, hand feeding carriage set over tail block, with two H. P., 220-440 volt "Richmond" motor on saddle underneath head block.	Amer. Woodworking Machinery Company	1	$580.36	0	0	$380.36
	Total Pattern Shop.....		..	$1,389.71		$20.18	$1,369.53

Machine Shop.

	Item.	Maker.	Age (years).	Cost.	Depreciation. Per cent.	Depreciation. Amount.	Present value.
1	Air Compressor, Type 3VS, 23-inch, 300 cu. ft., 90-pound, "3PH", 25-cycle, 230-volt, A. C., General Electric Motor Driven, Machine No. 275, Motor No. 1,165,008, with one suction strainer for taking air from outside of building; one type "RNW" controller, complete with "UD" 3 governor No. 102; 90-100 pound VS strainer and 7 x 14" reservoir; one 42½ x 96" reservoir; one ½" drain cock; one 110-pound safety valve; one 1½" mica insulator and one 1½" stop cock.	Nat'l Brake & Electric Co.	1	$2,371.39	0	0	$2,371.39
1	Combination Punch and Shear, hand operated, including bed.	Niagara M. & T. Works..	1	$34.00	5	$1.70	$32.30
1	"Yankee" Cutter-Reamer Drill Grinder, Style EX; 20" reamers, 16" flutes, including one 2-H. P., 220-volt, 3-phase, 25-cycle General Electric motor.	J. T. Ryerson & Son....	1	$200.00	2	4.00	196.00
1	Traveling Crane, 10-ton, 3-motor electric, 59 ft. span center to center of carrying wheels, platform full length of bridge on one side; wiring in accordance with Underwriters' rules, complete with General Electric motors; hoist 15; bridge 7½; trolley 3 H. P. and controllers.	Pawling & Harnishfeger Co.....	1	$3,915.00	0	0	$3,915.00
1	set (4) Locomotive Hoisting Jacks, 150-ton, with 27-H. P., 230-volt, 3-phase, A. C. General Electric motors.	Whiting Fdry. Equipt. Co.	1	$4,130.00	0	0	$4,130.00
	Carried Forward		..	$10,650.39		$5.70	$10,644.69

Account 44—Shop Machinery.

Machine Shop.

Item.	Maker.	Age (years).	Cost.	Depreciation. Per cent.	Depreciation. Amount.	Present value.
Brought Forward	..		$10,650.39		$5.70	$10,644.69
1 50-ton locomotive Forging Press complete, with 3-H. P., 220-volt, 3-phase, A. C. General Electric motor and crane.	Watson-Stillman Company	1	$913.75	0	0	$913.75
1 2-inch double head Bolt Cutter, with full set of right hand dies for each head for cutting bolts ⅜" to 2", and right hand dies for each head for cutting 12-thread stay-bolts on 1 1/16, 1⅛, 1 3/16, 1¼, 1 5/16, 1⅜ and 1½. Chasers, piping and pump included. Operated by one 5 H. P. Wagner 220-440 volt, 25 cycle, 3-phase, 720 R. P. M. motor, A. C., with pulley and rails, switch and fuse terminals.	Landis Machine Company	1	$1,009.62	2	$20.19	$989.43
1 Crank Shaper; 24-inch, double triple quick-stroke back geared, with vise table support, automatic trip feed, and all regular features. Operated by 1 Wagner 5-H. P. 220-440 volt, 25-cycle, 3-phase 1410 R. P. M. A. C. motor, with pulleys and rails, switch and fuse terminals.	Gould & Eberhardt.....	1	$927.87	0	0	$927.87

1	Radial Drill; 5-foot arm, full universal, with plain table, positive back gears, depth gauge, eight changes of speed from .007 to .064 per revolution; through feed box having steel gears, gear guards, reversible clutch for tapping, with 24 changes of speed, fitted with speed box; all bearings bronze bushed. All gears 5% nickel steel. Full set of wrenches. Operated by 1 Wagner 5-H. P. 220-440 volt, 25-cycle, 3-phase, 710 R. P. M., A. C. Motor, with pulley and rail, switch, and fuse terminal.	Cincinnati-Bickford	1	$1,834.44	0	0	$1,834.44
1	Drill Press; 21-inch, heavy pattern, sliding head, with wheel lever, power feed, back gears, automatic stop and quick return, geared tapping attachment, positive geared feed box giving four feeds, .005, .008, .012, .017 per revolution, equipped with Morse No. 3 taper square base, swinging round table. Operated by 1 Wagner 1 H. P. 220-440 volt, 25-cycle, 3-phase, A. C. motor, 710 R. P. M. with pulley, without rail; one 30 ampere switch and fuse terminal.	Cincinnati-Bickford	1	$334.99	0	0	$334.99
	Carried Forward		..	$15,671.06		$25.89	$15,645.17

Machine Shop.

	Item.	Maker.	Age (years).	Cost.	Depreciation. Per cent.	Depreciation. Amount.	Present value.
	Brought Forward	..	..	$15,671.06		$25.89	$15,645.17
1	Driving Wheel Lathe; 79", with quartering attachment, but not with journal bearing attachment. Operated with three Wagner motors, two 3-H. P. 220-440 volt, 25-cycle, 3-phase, 750 R. P. M. A. C. motors, without pulley or rails, with 300 ampere fuse terminals; and one 25-H. P. 220-440 volt, 25-cycle, 3-phase, 750 R. P. M. A. C. motor, no pulley or rails, with compensator with no voltage release.	Niles Bement Pond Company	1	$6,384.02	0	0	$6,384.02
1	Dry Grinder; 14 x 2", with General Electric A. C. 220-440 volt, 25-cycle, 3-phase motor.	Ransom Manfg. Company	1	$170.00	2	$3.40	$166.60
1	Engine Lathe; 24", actual swing 26½", high duty, with sight-speed geared head for motor drive, 9 speed double back geared head, equipped with European tool block, 2D "Skinner" heavy independent chuck, 15", and "Skinner" four-jaw universal chuck. Operated by one Wagner 10-H. P. 220-440 volt, 25-cycle, 3-phase, 750 R. P. M. A. C. motor, without pulley or rails, with C. and H. reversible drum type controller.	American Machine Tool Company	1	$1,858.11	0	0	$1,858.11

1	Vertical Boring and Turning Mill; 42-inch (swings 44"), heavy duty, with one swivel head and one turret head, back gear lever, direct drive; also one set of four Model 88, 10" steel body jaws. Operated by one Wagner 10 H. P. 220-440 volt, 25-cycle, 3 phase, 710 R. P. M. A. C. motor, without pulley or rails, with General Electric compensator with no voltage release.	King Machine Tool Co...	1	$2,553.09	0	0	$2,553.09
1	Engine Lathe; 14-inch high duty, 12 x 10" chucks, controller on apron of lathe. Geared head. Operated by one Wagner 3 H. P., 220 volt, 25 cycle, 3 phase, A. C. motor, 710 R. P. M., without pulley and rails. C. & H. reversible drum type controller.	American Machine Tool Company.....	1	$878.31	0	0	$878.31
	Carried Forward		..	$27,514.59		$29.29	$27,485.30

Machine Shop.

Machine Shop.

	Item.	Maker.	Age (years).	Cost.	Depreciation. Per cent.	Depreciation. Amount.	Present value.
	Brought Forward		..	$27,514.59		$29.29	$27,485.30
1	Planer; 36 x 36" x 14', heavy pattern, with four step cone speed variator, two heads on rail, two side heads, rail heads with power feed in all directions, side heads with vertical feed only; gearing attachments; direct drive. Operated by one Wagner 15 H. P., 220-440 volt, 25-cycle, 3-phase, 500 R. P. M., A. C. motor, without pulley and rail; with General Electric compensator with no voltage release.	Amer. Mach. Tool Co.	1	3,393.87	0	0	3,393.87
1	Boring Bar; portable, 4" diameter, 6 ft. long	H. B. Underwood	1	330.00	0	0	330.00
1	Drill Grinder; "Yankee," style BX, cutter reamer grinder, 20" reamers, 16" flutes, including one 2 H. P., 220-volt, 3-phase, 25-cycle General Electric motor.	J. T. Ryerson & Son	1	200.00	2	4.00	196.00
1	Metal Saw; "Q & C" No. 2-B, with circular base on turntable, one automatic saw grinder and lateral adjustment. Operated by 1 Wagner 5 H. P. 220-440 volt, 25-cycle, 3-phase, 710 R. P. M. A. C. motor, without pulley or base rails, with 30-ampere switch, and 15 ampere fuse terminals; and one General Electric ½ H. P. 220 volt, 25-cycle, 3-phase motor for operating saw sharpener, equipped with sole plates.	do.	1	1,307.82	0	0	1,307.82
1	Set light sheet iron Bending Rolls; quick acting type, 6½" diameter upper roll. 5" diameter lower roll. Hand tool.	do.	1	450.00	0	0	450.00
1	8-foot Flanging Clamp; hand operated	do.	1	223.00	0	0	223.00
1	Flue Cutting Apparatus	Fuessler	1	173.04	0	0	173.04
	Carried Forward		..	$33,592.32		$33.29	$33,559.03

Machine Shop.

Item.	Maker.	Cost.	Depreciation. Per cent.	Depreciation. Amount.	Present value.
Brought Forward		$33,592.32		$33.29	$33,559.03
13 Vises		160.00	5	8.00	152.00
2 Anvils		29.25	5	1.46	27.79
1 Portable Crane	Canton Fdy. & Mach. Co.	75.31	5	3.77	71.54
6 Steel Tool Cabinets	Railway Company	100.00	10	10.00	90.00
4 Jib Cranes with trolley	do.	180.00	10	18.00	162.00
2 5" Air Hoists	do.	50.00	10	5.00	45.00
5 Surface Plates	do.	305.00	10	30.50	274.50
1 Bulldozzer	do.	100.00	10	10.00	90.00
1 1-ton Differential Chain Hoist		4.80	10	.48	4.32
1 Flue Swedge	do.	50.00	20	10.00	40.00
1 Flue Cutter	do.	50.00	20	10.00	40.00
1 Centering Machine	do.	50.00	20	10.00	40.00
1 Air Motor	Independent Pneumatic Tool Company	80.00	10	8.00	72.00
1 Air Motor	Ingersoll-Rand	76.50	10	7.65	68.85
1 Corner Drill	Chicago Pneumatic Tool Company	90.00	10	9.00	81.00
Carried Forward		$34,903.18		$175.10	$34,818.08

Carried Forward .....

Account 44—Shop Machinery.

Machine Shop.

	Item.	Maker.	Cost.	Depreciation. Per cent.	Depreciation. Amount.	Present value.
	Brought Forward		$34,993.18		$175.15	$34,818.03
1	Breast Drill	Chicago Pneumatic Tool Company	52.00	10	$5.20	$46.80
2	Caulking Hammers	Railway Company	30.00	10	3.00	27.00
1	Riveting Hammer	do.	45.00	10	4.50	40.50
1	Chipping Hammer	Canton	25.00	10	2.50	22.50
1	Gauge Tester	Crosby	58.50	0	0	58.50
2	Hydraulic Jacks	Dudgeon	260.00	10	26.00	234.00
	Miscellaneous Small Tools		3,606.14	10	360.61	3,245.53
	Labor Unloading and Placing Machines		1,800.00	..	.....	1,800.00
	Foundations for Machines		1,151.00	..	.....	1,151.00
	Total Machine Shop		$42,020.82	..	$576.96	$41,443.86
	Grand Total Shop Machinery		$43,410.53	..	$597.14	$42,813.39

	Item.	Maker.	Age (years).	Cost.	Depreciation. Per cent.	Depreciation. Amount.	Present value.
2	Transformers; double ratio, 5 ampere, secondary current, insulated for 13200 volts primary voltage.	Wagner	1	$54.00	5	$2.70	$51.30
1	Transformer; 20 KW, 13200/6600/115/230 volt, 25-cycle, single phase, equipped for inside installation, with hangers and oil.	Wagner	1	$297.00	5	$14.85	$282.15
6	Switches; Type "L," Form C-6, General Electric Catalog No. 76433, single pole, single throw, disconnecting, with safety catches, operating hook and handle.	General Electric Company	1	$90.00	0	0	$90.00
1	Voltmeter; General Electric Catalog No. 51020, 25-cycle, A. C. horizontal edgewise, calibrated for 13200/6600 volt primary current, with one 8-point potential receptacle, and one 4-point plug and plug holder.	General Electric Company	1	$37.00	0	0	$37.00
1	Switch; General Electric Catalog No. 125453, 300 ampere, 15000-volt, triple pole, single throw, Type "F" Form K-12 oil, hand operated, remote control.	General Electric Company	1	$130.00	0	0	$130.00
2	Type I, Form D-4, combined expulsion fuse holder and disconnecting Switches and fuses, with insulation.	General Elec. Co.	1	$118.00	0	0	$118.00
3	Transformers; 50 KVA 13200-6600-230-115 volt, 25-cycle, single phase, type 11 ROB. Nos. 61910-911-912, with oil.	Wagner	1	$1,263.00	5	$63.15	$1,199.85
1	General Electric Lightning Arrestor; Catalog No. 79586, A. C. equipped with charging resistances, pipe supports and copper tubing for making connection to horn gaps. Primary voltage 13200-6600, 25-cycle, 3-phase.	General Electric Company	1	$310.00	0	0	$310.00
3	Choke Coils; No. 78806, mounted on steel bases	General Elec. Co.	1	$63.00	0	0	$63.00
	Total, Power Plant Machinery		..	$2,362.00		$80.70	$2,281.30

ACCOUNT 47.

Unapplied Construction Materials and Supplies.

I. C. C. Item.	Subject.	Unit.	Quantity.	Unit price.	Cost of reproduction new.	Depreciation. Per cent.	Depreciation. Amount.
47	Unapplied Construction Materials and Supplies.						
	10′ Switch Points	Pair	3	$24.10	$72.30	None	
	#5 Frogs, 85#	Each	6	23.60	141.60	None	
	Special Switches	"	3	220.00	660.00	None	
	Switch ties	M.B.M.	23	24.00	552.00	None	
	Bridge Timber	"	13	30.00	390.00	None	
	Granite Blocks	M	50,000	24.00	1,200.00	None	
	Total				$3,015.90		
	Depreciation				.....		
	Present value				$3,015.90		

1032 *Account 51—Steam Locomotives.*

Class.	Locomotive number.	Builder.	Date built.	Weight on drivers.	Diameter drivers.	Number drivers.	Size of cylinders.	Steam pressure.	Cost.	Depreciation. %	Depreciation. Amount.	Present value.
Switch	1	Amer. Loco. Co.....	1907	143,000	50"	6	20 x 26"	180 lbs.	$13,500	25	$3,375	$10,125
Switch	2	Amer. Loco. Co.....	1907	143,000	50"	6	20 x 26"	180 lbs.	13,500	25	3,375	10,125
Switch	3	Lima Loco. Co.....	1911	145,000	50"	6	20 x 26"	190 lbs.	11,125	15	1,669	9,456
Switch	4	Amer. Loco. Co.....	1909	143,000	50"	6	20 x 26"	180 lbs.	12,381	20	2,476	9,905
Switch	5	Baldwin " ".....	1892*	104,000	50"	6	18 x 26"	150 lbs.	4,500	0	0	4,500
Switch	6	Baldwin " ".....	1912	146,000	50"	6	20 x 26"	190 lbs.	12,335	5	616	11,719
Switch	7	Baldwin " ".....	1913	146,000	50"	6	20 x 26"	190 lbs.	12,375	5	619	11,756
Total..	7								$79,716		$12,130	$67,586

* Rebuilt 1911.

1033 ACCOUNT 53.

Freight Train Cars.

Class.	No. cars.	Car numbers.	Capacity.	Sills.	Draft gear.	Date built.	Cost each.	Total cost.	Depreciation %	Depreciation Amount.	Present value.
Box	2	3000–3010	60,000	Steel Channels	Cardwell Friction	1913	$917.00	$1,834.00	5	$91.70	$1,742.30
Box	1	3020	60,000	Wood	Spring	1913	$683.00	$683.00	5	$34.15	$645.85
Gondola	3	6075–76–77	60,000	Wood	Spring	1914	$538.00	$1,614.00	0	0	$1,614.00
Bottom Dump.	25	8050 to 8074	80,000	Wood	Spring	1914	$745.00	$18,625.00	5	$931.25	$17,693.75
	50	9500 to 9549	100,000	Steel	Cardwell Friction	1914	$960.00	$49,000.00	0	0	$49,000.00
	81				Total.....			$71,756.00		$1,057.10	$70,698.90

1034 ACCOUNT 57.

Work Equipment.

Class.	Cars.	Numbers.	Capacity.	Sills.	Gear.	Built.	Each.	Cost.	%	Amount.	Value.
Gondola..... Side Dump.... Cinder.....	2	2000–2001	60,000	Wood	Spring	Unknown	$785.00	$1,570.00	60	$942.00	$628.00
Box Tool.....	1	No Number	50,000	Wood	Spring	Unknown	$480.00	$480.00	60	$288.00	$192.00
Tool Car Supplies.....								$1,106.54	25	$276.63	$829.91
Total.....								$3,156.54		$1,506.63	$1,649.91

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EXHIBIT 3.

United States District Court.

No. 4384.

MANUFACTURERS' RAILWAY COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Exhibit No. 3 to the Testimony of J. W. Kendrick. 2/15/1915. M. J. C. Byron F. Babbitt, Special Examiner.

(Here follow tabular statements marked pages 1036 to 1040, inc.)

SUMMARY A.

ENTIRE PROPERTY OPERATED BY MANUFACTURERS' RAILWAY COMPANY

(Includes all colored tracks shown on the Map).

I.C.C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
	I. ROAD.			
1	Engineering	$ 93,621.06	None	$ 93,621.06
2	Land for Transportation Purposes	2,313,012.00	None	2,313,012.00
3	Grading	143,932.16	(Appreciation ($ 4,876.44	148,808.60
6	Bridges, Trestles & Culverts	112,224.29	4,633.32	107,590.97
8	Ties	86,447.42	22,141.76	64,305.66
9	Rails	91,442.19	9,517.74	81,924.45
10	Other Track Material	73,819.41	9,981.95	63,837.46
11	Ballast	53,485.39	None	53,485.39
12	Track Laying & Surfacing	54,510.42	None	54,510.42
13	Crossings and Signs	6,343.00	2,309.00	4,034.00
16	Station & Office Buildings	135,831.34	17,597.80	118,233.54
17	Roadway Buildings	6,277.53	1,166.01	5,111.52
18	Water Stations	820.00	24.60	795.40
19	Fuel Stations	1,431.04	88.69	1,342.35
20	Shops and Engine Houses	124,630.09	1,498.65	123,131.44
30	Power Substation Buildings	1,512.00	15.12	1,496.88
35	Miscellaneous Structures	2,815.00	422.25	2,392.75
36	Paving	25,444.30	3,457.32	21,986.98
37	Roadway Machines	67.50	7.50	60.00
38	Roadway Small Tools	805.29	201.32	603.97
44	Shop Machinery	43,410.53	597.14	42,813.39
46	Power Substation Apparatus	2,362.00	80.70	2,281.30
47	Unapplied Construction Material	3,015.90	None	3,015.90
			$73,740.87	
			App. 4,876.44	
	TOTAL ROAD	$3,347,259.86	$68,864.43	$3,278,395.43
	II. EQUIPMENT.			
51	Steam Locomotives	$ 79,716.00	$12,130.00	$ 67,586.00
53	Freight-train Cars	71,786.00	1,087.10	70,698.90
57	Work Equipment	3,156.64	1,506.63	1,649.91
	TOTAL EQUIPMENT	$ 154,658.64	$14,693.73	$ 139,934.81
	III. GENERAL EXPENDITURES			
	Interest on Items 1 to 47, both inclusive, @ 3-3/4%,	$ 125,522.25		125,522.25
	GRAND TOTAL	$3,627,410.65	$83,558.16	$3,543,852.49

SUMMARY B.

YARDS AND TRACKS OWNED BY ANHEUSER-BUSCH BREWING ASSOCIATION
(Tracks colored Red on the Map)

C.	Subject	Cost of Reproduction New	Depreciation	Present Value
ROAD.				
gineering		$ 24,479.98	None	$ 24,479.98
nd for Transportation Purposes		565,544.00	None	565,544.00
ading		77,094.01	Appreciation $ 3,404.55	80,498.56
ies		8,620.78	3,882.05	4,744.73
ail		13,818.14	1,381.81	12,436.33
ther Track Material		20,773.80	3,116.07	17,657.73
allast		16,900.64	None	16,900.64
rack Laying		9,876.17	None	9,876.17
tation and Office Buildings		96,067.00	12,008.37	84,058.63
aving		1,643.25	230.05	1,413.20
	TOTAL ROAD	$834,823.77	$20,618.35 Ap. 3,404.55 $17,213.80	$817,609.97
GENERAL EXPENDITURES				
terest during Construction, @ 3-3/4 %,		31,305.89		31,305.89
	GRAND TOTAL	$866,129.66	$17,213.80	$848,915.86

NOTE: See Exhibit K for detail.

SUMMARY B-1.

VALUE OF TRACKS AND APPURTENANT RIGHT-OF-WAY USED EXCLUSIVELY BY ANHEUSER-BUSCH BREWING ASSOCIATION.

I.C.C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
I.	R O A D .			
1	Engineering	$ 4,769.37	None	$ 4,769.37
2	Land for Transportation Purposes	112,482.00	None	112,482.00
3	Grading	1,461.08	(Appreciation $ 53.31	1,514.39
8	Ties	3,315.74	1,492.08	1,823.66
9	Rail	5,027.81	198.09	4,829.72
10	Other Track Material	12,274.11	1,968.61	10,305.50
11	Ballast	9,463.86	None	9,463.86
12	Track Laying	4,399.43	None	4,399.43
16	Station and Office Buildings	10,196.25	1,706.24	8,490.01
18	Paving	1,555.75	221.30	1,334.45
	TOTAL ROAD	$164,915.10	$5,586.32 53.31 5,533.01	$159,382.09
III.	GENERAL EXPENDITURES			
28	Interest during Construction @ 3-3/4%,	6,184.32		6,184.32
	GRAND TOTAL	$171,099.42	$5,533.01	$165,566.41

(Consisting of the Ninth Street Yard and 12 tracks in First, Eleventh and Foot of Dereas Street Yards, colored red on map).

SUMMARY C.

SUMMARY A MINUS SUMMARY B.

I.C.C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
	I. ROAD.			
1	Engineering	$ 69,141.08	None	$ 69,141.08
2	Land for Transportation Purposes	1,747,468.00	None	1,747,468.00
3	Grading	66,838.15	(Appreciation $ 1,471.89	68,310.04
6	Bridges, Trestles & Culverts	112,224.29	4,633.32	107,590.97
8	Ties	47,820.64	18,259.71	29,560.93
9	Rails	77,624.06	8,135.93	69,488.13
10	Other Track Material	53,045.61	6,865.88	46,179.73
11	Ballast	36,684.76	None	36,684.76
12	Track Laying	44,634.25	None	44,634.25
15	Crossings & Signs	6,343.00	2,309.00	4,034.00
16	Station & Office Buildings	39,764.34	5,589.43	34,174.91
17	Roadway Buildings	6,277.53	1,166.01	5,111.52
18	Water Stations	820.00	24.60	795.40
19	Fuel Stations	1,431.04	88.69	1,342.35
20	Shops	124,630.09	1,498.65	123,131.44
30	Power Substation Buildings	1,512.00	15.12	1,496.88
36	Miscellaneous Structures	2,815.00	422.25	2,392.75
38	Paving	23,801.05	3,227.27	20,573.78
37	Roadway Machines	67.50	7.50	60.00
38	Roadway Tools	806.29	201.32	603.91
44	Shop Machinery	48,410.53	597.14	42,813.39
46	Power Substation Apparatus	2,362.00	80.70	2,281.30
47	Unapplied Construction Material	3,015.90	None	3,015.90
			$53,122.52	
			App. 1,471.89	
	TOTAL ROAD	$2,512,436.09	$51,650.63	$2,460,785.46
	II. EQUIPMENT			
51	Steam Locomotives	79,710.00	12,130.00	67,586.00
53	Freight-train Cars	71,756.00	1,057.10	70,698.90
57	Work Equipment	3,156.84	1,506.63	1,649.91
	TOTAL EQUIPMENT	154,628.84	14,693.73	139,934.81
	III. GENERAL EXPENDITURES			
	Interest, Items 1 to 47, inclusive, 3-3/4%.	94,216.36		94,216.36
	GRAND TOTAL	$2,761,280.99	$66,344.36	$2,694,936.63

SUMMARY D.

PRESENT VALUE OF PROPERTY OF MANUFACTURERS' RAILWAY

I.C.C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
I.	ROAD.			
1	Engineering	$ 69,141.08	None	$ 69,141.08
2	Land for Transportation Purposes	557,349.50	None	557,349.50
3	Grading	66,838.15	Appreciation $ 1,471.89	68,310.04
6	Bridges, Trestles & Culverts	112,224.29	4,633.32	107,590.97
8	Ties	47,620.64	18,259.71	29,360.93
9	Rails	77,624.05	8,135.93	69,488.12
10	Other Track Material	53,045.61	6,865.88	46,179.73
11	Ballast	36,584.75	None	36,584.75
12	Track Laying	44,634.25	None	44,634.25
15	Crossings & Signs	6,343.00	2,309.00	4,034.00
16	Station & Office Buildings	38,764.34	5,589.43	34,174.91
17	Roadway Buildings	6,277.53	1,166.01	5,111.52
18	Water Stations	820.00	24.60	795.40
19	Fuel Stations	1,431.04	88.69	1,342.35
20	Shops	124,630.09	1,498.65	123,131.44
21	Power Substation Buildings	1,512.00	15.13	1,496.88
26	Miscellaneous Structures	2,815.00	422.25	2,392.75
30	Paving	23,801.05	3,227.27	20,573.78
37	Roadway Machines	67.50	7.50	60.00
38	Roadway Tools	805.29	201.32	603.97
44	Shop Machinery	43,410.53	597.14	42,813.39
46	Power Substation Apparatus	2,362.00	80.70	2,281.30
47	Unapplied Construction Material	3,015.90	None	3,015.90
			$53,122.52	
			App. 1,471.89	
	TOTAL ROAD	$1,323,317.59	$51,650.63	$1,270,666.96
	Present Value of Leases	757,102.00		757,102.00
II.	EQUIPMENT			
51	Steam Locomotives	79,716.00	12,130.00	67,586.00
53	Freight Train Cars	71,756.00	1,057.10	70,698.90
57	Work Equipment	3,156.54	1,506.63	1,649.91
	TOTAL EQUIPMENT	$ 154,628.54	$14,693.73	$ 139,934.81
III.	GENERAL EXPENDITURES			
	Interest, Items 1 to 47, inclusive, 3-3/4%.	47,650.01		47,650.01
	GRAND TOTAL	$2,281,698.14	$66,344.36	$2,215,353.78

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Manufacturers' Railway Company of St. Louis,

South Side Bank Building, Broadway and Pestalozzi.

Executive Department.

G. F. Moore, President.

RECAPITULATION.

Analysis of Traffic for Five Months.

Car Loads Interchanged.

Month and year.	Interstate.	Intrastate.
July, 1912	5,029	818
January, 1913	3,479	576
April, 1913	3,856	665
July, 1913	5,840	1,076
October, 1914	3,529	613
Totals	21,733	3,748
Total Car Loads Interchange		25,481

85.3% Interstate.
14.7% Intrastate.

United States District Court. No. 4384. Manufacturers' Railway Co. vs. United States of America and Interstate Commerce Commission. Exhibit A to the testimony of G. F. Moore. 2/17/1915. M. J. C. (6 sheets). Byron F. Babbitt, Special Examiner.

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Manufacturers' Railway Company of St. Louis,

South Side Bank Building, Broadway and Pestalozzi.

Executive Department.

G. F. Moore, President.

July, 1912.

	Interstate.			Intrastate.		
	Outbound.	Inbound.	Total.	Outbound.	Inbound.	Total.
B. & O.	55	156	211	...	...	...
C. & A.	230	140	370	...	...	...
C. & E. I.	124	76	200	...	...	...
C. B. & Q.	216	183	399	57	36	93
C. C. C. & St. L.	124	92	216	...	...	...
C. P. & St. L.	52	63	115	...	...	...
C. R. I. & P.	37	12	49	69	35	104
E. St. L. & Sub.	...	1	1	...	...	...
Ill. Cent.	206	198	404	...	...	...
L. & M.	9	4	13	...	...	...
L. & N.	52	50	102	...	...	...
M. K. & T.	83	62	145	40	10	50
Mo. Pac.	133	65	198	85	61	146
M. & O.	154	128	282	...	...	...
St. L. I. M. & S.	262	146	408	121	42	163
St. L. & O'F.	...	8	8	...	...	...
St. L. S. W.	250	107	357	...	...	...
St. L. T. & E.	2	3	5	...	...	...
St. L. S. F.	97	56	153	65	65	130
Sou.	169	100	269	...	...	...
T. St. L. & W.	140	59	199	...	...	...
Van.	65	303	368	...	...	...
Wab. E.	115	70	185	...	...	...
Wab. W.	192	88	280	47	29	76
Terminal R. R.	52	40	92	35	21	56
Total	2,819	2,210	5,029	519	299	818

Interstate proportion for month is— 86 per cent of Traffic.
Intrastate " " " "—139 " " "

M. J. C.

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Manufacturers' Railway Company of St. Louis,

South Side Bank Building, Broadway and Pestalozzi.

Executive Department.

G. F. Moore, President.

January, 1913.

	Interstate.			Intrastate.		
	Outbound.	Inbound.	Total.	Outbound.	Inbound.	Total.
B. & O.	61	115	176	...	...	...
C. & A.	127	124	251	...	...	...
C. & E. I.	21	63	84	...	...	...
C. B. & Q.	109	142	251	13	28	41
C. C. C. & St. L.	71	103	174	...	...	...
C. P. & St. L.	32	67	99	...	...	...
C. R. I. & P.	7	3	10	45	29	74
Ill. Cent.	129	196	325	...	...	...
L. & M.	4	10	14	...	...	...
L. & N.	26	39	65	...	...	...
M. K. & T.	45	40	85	25	6	31
Mo. Pac.	59	61	120	30	59	89
M. & O.	74	94	168	...	...	...
St. L. I. M. & S.	79	128	207	29	64	93
St. L. & O'F.	...	11	11	...	...	...
St. L. S. W.	156	87	243	...	...	...
St. L. T. & E.	1	2	3	...	...	...
St. L. & S. F.	38	75	113	32	50	82
Sou.	104	58	162	...	...	...
T. St. L. & W.	107	58	165	...	...	...
Van.	52	250	302	...	...	...
Wab. E.	65	99	164	...	...	...
Wab. W.	91	72	163	32	53	85
Terminal R. R.	45	79	124	58	23	81
Total	1,503	1,976	3,479	264	312	576

Interstate proportion for month is— 85 per cent of Traffic.
Intrastate proportion for month is—142 per cent of Traffic.

M. J. C.

1044

Manufacturers' Railway Company of St. Louis,

South Side Bank Building, Broadway and Pestalozzi.

Executive Department.

G. F. Moore, President.

April, 1913.

	Interstate.			Intrastate.		
	Out-bound.	In-bound.	Total.	Out-bound.	In-bound.	Total.
B. & O.	37	45	82	...	...	...
C. & A.	216	129	345	...	...	...
C. & E. I.	60	111	171	21	...	21
C. B. & Q.	135	143	278	21	29	50
C. C. C. & St. L.	74	58	132	...	...	...
C. P. & St. L.	27	63	90	...	...	...
C. R. I. & P.	36	18	54	34	26	60
E. St. L. & Sub.	...	1	1	...	...	...
Ill. Cent.	121	118	239	...	...	...
I. & M.	5	5	10	...	...	...
I. & N.	43	28	71	...	...	...
M. K. & T.	86	27	113	21	11	32
Mo. Pac.	95	55	150	36	70	106
M. & O.	60	54	114	...	...	...
St. L. B. Elec.	...	9	9	...	...	...
St. L. I. M. & S.	111	189	300	42	59	101
St. L. & O'F.	...	11	11	...	...	...
St. L. S. W.	217	116	337	27	...	27
St. L. T. & E.	1	6	7	...	...	...
St. L. S. F.	79	83	162	37	55	92
Sou.	99	51	150	...	...	...
T. St. L. & W.	121	72	193	...	...	...
Van.	50	241	291	...	...	...
Wab. E.	89	101	190	...	...	...
Wab. W.	131	77	208	49	34	83
Terminal R. R.	52	100	152	66	27	93
Total	1,945	1,911	3,856	354	311	665

Interstate proportion for month is— 85 per cent of Traffic.
Intrastate " " " "—147 per cent of Traffic.

M. J. C.

1045

Manufacturers' Railway Company of St. Louis,

South Side Bank Building, Broadway and Pestalozzi.

Executive Department.

G. F. Moore, President.

July, 1913.

	Interstate.			Intrastate.		
	Outbound.	Inbound.	Total.	Outbound.	Inbound.	Total.
& O.	94	79	173	...	...	...
& A.	282	139	421	...	...	...
& E. I.	103	39	142	24	...	24
B. & Q.	223	181	404	113	38	151
C. C. & St. L.	193	109	302	...	...	...
P. & St. L.	55	99	154	...	...	...
R. I. & P.	65	32	97	35	35	70
St. L. & Sub.	...	8	8	...	...	...
l. Cent.	330	163	493	...	...	...
& M.	8	5	13	...	...	...
& N.	112	44	156	...	...	...
K. & T.	138	74	212	53	13	66
o. Pac.	214	86	300	62	50	112
& O.	259	88	347	...	...	...
L. B. Elec.	...	2	2	...	...	...
L. I. M. & S.	146	211	357	154	51	205
L. & O'F.	...	13	13	...	...	...
L. S. W.	227	132	359	14	...	14
L. T. & E.	2	2	4	...	...	...
L. & S. F.	124	87	211	83	68	151
.	191	90	281	...	...	...
St. L. & W.	169	76	245	...	...	...
n.	80	331	411	...	...	...
h. E.	115	102	217	...	...	...
h. W.	172	107	279	130	59	189
rminal R. R.	150	89	239	72	22	94
Total	3,452	2,388	5,840	740	336	1,076

Interstate proportion for month is— 84 per cent of Traffic.
Intrastate " " " "—155 " " " "

M. J. C.

Manufacturers' Railway Company of St. Louis,

South Side Bank Building, Broadway and Pestalozzi.

Executive Department.

G. F. Moore, President.

October, 1914.

	Interstate.			Intrastate.		
	Out-bound.	In-bound.	Total.	Out-bound.	In-bound.	Total.
B. & O.	46	93	139	...	...	...
C. & A.	71	70	141	...	...	...
C. & E. I.	20	26	46	43	...	43
C. B. & Q.	107	159	266	17	22	39
C. C. C. & St. L.	76	68	144	...	...	...
C. P. & St. L.	160	166	326	...	...	...
C. R. I. & P.	42	26	68	9	4	13
Ill. Cent.	104	172	276	...	...	...
Ill. Tract. Sys.	4	1	5	...	...	...
L. & M.	3	16	19	...	...	...
L. & N.	26	26	52	...	...	...
M. K. & T.	46	45	91	24	7	31
Mo. Pac.	112	58	170	78	80	158
M. & O.	68	55	123	...	...	...
St. L. I. M. & S.	156	179	335	48	43	91
St. L. S. W.	85	62	147	18	...	18
St. L. & O'F.	...	216	216	...	...	...
St. L. & S. F.	63	42	105	33	53	86
St. L. T. & E.	1	2	3	...	...	...
Sou.	73	47	120	...	...	...
T. St. L. & W.	128	90	218	...	...	...
Van.	62	55	117	...	...	...
Wab. E.	51	37	88	...	...	...
Wab. W.	70	101	171	30	20	50
Terminal R. R.	34	109	143	56	28	84
Total	1,608	1,921	3,529	356	257	613

Interstate proportion for month is— 85 per cent of Traffic.
Intrastate " " " "—147 " " "

M. J. C.

No. 4384.

MANUFACTURERS' RAILWAY COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Exhibit No. 1, offered on behalf of the defendant, Interstate Commerce Commission, in connection with the testimony of G. F. Moore.

2/17/1915.
M. J. C.

BYRON F. BABBITT,
Special Examiner.

Filed Mar. 11, 1915. W. W. Nall, Clerk.

1048 9TH. 552.

Railroads Complying with the Order of the I. C. C. in Docket Case No. 3151, Manufacturers' Ry. et al. v. St. L., I. M. & S. Ry. et al.

Memo.

The following railroads have filed tariffs indicating their compliance with Order of the I. C. C., issued in connection with Docket No. 3151, Manufacturers' Railway Case:

Road.	Tariff.	I. C. C. No.	Effective date.
B. & O. S. W. R. R.	Absorption Tariff	6879	Jan'y 19th, 1915.
C. & A. R. R.	Local & Joint Tariff	1632	Jan'y 21st, 1915.
C. & E. I. R. R.	Absorption Tariff	2616	Feb'y 28th, 1915.
C. B. & Q. R. R.	Absorption and L. & J. Tariff	11083 / 10610	Jan'y 1st, 1915.
C. P. & St. L. Ry	Absorption Tariff	997	Feb'y 16th, 1915.
C. R. I. & P. Ry	Absorption Tariff	C-9501	Jan'y 1st, 1915.
C. C. C. & St. L. Ry	Absorption and L. & J. Tariffs	6354	Jan'y 20th, 1915.

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Ill. Cent. R. R.	Absorption and L. & J. Tariffs.	A-8213 A-8172	Jan'y 1st, 1915.
M. & O. R. R.	Absorption and L. & J. Tariffs.	A-726 A-736	Jan'y 20th, 1915.
M. K. & T. Ry.	Absorption and L. & J. Tariffs.	A-3535 A-3627	Jan'y 3rd, 1915.

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Road.	Tariff.	I. C. C. No.	Effective date.
Mo. Pac. Ry.	Absorption & L. & J. Tariffs.	9481 A-2154	Jan'y 1st, 1915.
St. L. I. M. & S. Ry.	Do.	9532 A-2534	Do.
St. L. & S. F. R. R.	Absorption Tariff.	6691	Feb'y 16th, 1915.
Southern Ry.	Local & Joint Tariffs.	A-6426	Feb'y 15th, 1915.
T. St. L. & W. R. R.	Absorption Tariff	A-376	Jan'y 5th, 1915.
Vandalia R. R.	Absorption Tariff.	2771	Jan'y 18th, 1915.
Wabash R. R.	Absorption Tariff.	3636	Jan'y 1st, 1915.

The tariffs shown opposite each of the roads specified above, are but one issue of each line, in which joint rates on St. Louis basis were established from and to stations on the Manufacturers' Railway. Others were filed effective various dates.

The only railroads which do not appear to have complied in any manner with the Commission's Order in the above case are the L. & N. R. R. and St. L. S. W. Ry.

A. H. F.

2/4/15.

M A N U F A C T U R E R S'

S T A T E

1 9 1 0 CARLOADS I

Mo.	ABBA Fwd	ABBA Recd	MISC'L Fwd	MISC'L Recd	Total Cars Inter-changed
Jan.	1100	1285	129	402	2916
Feb.	1180	1271	141	447	3039
Mar.	2063	1541	175	475	4254
Apr.	1491	1264	187	359	3301
May	1865	1369	156	431	3821
Jun.	2509	1498	217	417	4641
Jul.	2476	1834	222	429	4961
Aug.	2548	1965	233	566	5312
Sep.	2047	1606	219	522	4394
Oct.	1809	1676	197	622	4304
Nov.	1402	1606	201	717	3926
Dec.	1449	1566	179	728	3922
	21939	18461	2256	6115	48791

Pe

S' R A I L W A Y C O M P A N Y

A T E M E N T

S INTERCHANGED 1 9 1 1

Mo.	ABBA Fwd	ABBA Recd	MISS'L Fwd	MISS'L Recd	Total Cars Inter-changed	Gain	Loss
Jan.	1395	1527	163	635	3720	804	
Feb.	1413	1229	175	584	3401	362	
Mar.	1746	1352	215	675	3985		266
Apr.	1654	1434	253	577	3918	617	
May	2405	1544	279	576	4804	983	
Jun.	2869	1811	330	621	5631	990	
Jul.	2726	1966	318	700	5700	739	
Aug.	2840	1971	356	738	5903	593	
Sep.	2484	1965	304	695	5448	1054	
Oct.	1760	1948	283	835	4826	522	
Nov.	1291	1465	251	742	3749		177
Dec.	1503	1300	285	764	3852		70
	24086	19502	3212	8142	54942	6664	513
GAIN	2147	1021	956	2027	5151	5151	
Gain Per Cent	.098	.055	.424	.331	.106		

[Endorsed:] Filed Mar. 12, 1912. W. H. Hall, Clerk.

Statement Showing Distances via Manufacturers' Ry. between Team Tracks and Industries Served Exclusively by the Mfgrs.' Ry. and the Points of Interchange with the Iron Mountain Ry. and with the Wiggins Ferry Co.

Jan. 13, 1912.

Industries and team tracks.	Distance to interchange with Iron Mountain.	Distance to interchange with Wiggins Ferry.
Schroeter Coal Co.	2,300	5,000
Team Tracks at Broadway & Pestalozzi St.	2,500	5,200
St. Louis Dressed Beef & Provision Co.	2,400	5,100
Nelson Morris & Co.	2,400	5,100
Stecher Cooperage Co.	2,700	5,400
Team Tracks at Ninth & Dorcas	3,800	6,500
Ganahal, Fidol Lumber Co.	5,300	7,300
Team Track at 2nd and Utah Sts.	4,500	6,500
Track in De Kalb St.	5,600	7,600
Team Track at 2nd & Dorcas	1,800	7,100
Track at 2nd and Louisa Sts.	2,600	5,800
Team Tracks at 2nd and Trudeau Sts.	5,300	8,500
Western Foundry & Sash Weight Co.	8,400	11,600
John Nooter Boiler Works	9,600	12,800
Team Tracks 2nd and Park Sts.	9,600	12,800
Summit Coal & Mining Co.	9,700	12,900
Team Track at Rutger St.	9,700	12,900
Bradbury Marble Co.	9,700	12,900

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

EXHIBIT BETTISON No. 2.

Jan. 17th, 1912.

Statement Showing Approximate Estimates of Cost, Exclusive of Right of Way and Franchises, for Building Tracks from the "Iron Mountain" Road to Each of the Team Tracks and Industries now Served Exclusively by the Manufacturers' Railway, and also the Approximate Cost of the Team Tracks and Industrial Tracks.

Name of industry or team track.	Cost of track to reach the industry or team track.	Cost of team track or industrial track.	Total cost.	Total lengths of tracks in feet.
Schroeter Coal Co.	$5,038	$5,763	$10,801	3,130
Team Tracks, 9th & Dorcas Sts.	9,995	3,530	13,525	2,510
Nelson, Morris Co.	1,106	1,770	2,876	1,180
St. L. Dressed Beef & Prov. Co.	.....	885	885	400
Team Tracks, Broadway & Pestalozzi	.....	2,975	2,975	940
Stecher Cooperage Works	2,100	1,825	3,925	1,380
Team Track 2nd & Utah Sts.	8,400	1,000	9,400	1,750
Ganahal, Fidel Lumber Co.	2,400	1,370	3,770	1,420
New track in De Kalb St.	.....	3,650	3,650	1,550
Team Track 2nd & Dorcas	3,815	1,050	4,865	1,230
Team Track 2nd & Louisa	700	875	1,575	850
Team Tracks 2nd & Trudeau	2,375	1,500	3,875	1,280
Team Track 2nd & Park St.	.....	1,500	1,500	560
Western Foundry & Sash Wt. Co.	750	780	1,530	850
John Nooter Boiler Works	.....	690	690	300
Bradbury Marble Co.	3,550	375	3,925	1,350
Summit Coal & Mining Co.	.....	1,440	1,440	270
Team Track at Rutger St.	.....	1,890	1,890	370
	$40,229	$32,868	$73,097	21,320

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

EXHIBIT BETTISON No. 3.

Valuation of St. Louis Manufacturers' Railway.

Jan 13th, 1912.

Main Switching Tracks Required for Use of Anheuser Busch Brewing Interests.

	In public streets and alleys.		On private property.		Totals.	
	Length in feet.	Value.	Length in feet.	Value.	Length in feet.	Value.
2nd St. from 85 ft. North of Utah St. to the South side of Dorcas St.	1,590	$10,250	....	.....	1,590	$10,250
Connection bet. Dorcas and Pestalozzi St. tracks	....	.....	700	$2,075	700	2,075
Dorcas St. from West Side 9th St. to Connection with Iron Mtn. near Utah St.	2,500	21,700	800	1,640	3,300	23,340
From West Side 9th St. to East Side 12th St.	550	3,750	370	925	920	4,675
Pestalozzi St. Track, from connection with Iron Mtn. near Utah St. to W. side 9th St.	700	5,950	2,110	6,105	2,810	12,055
Connecting "Y" bet. 2nd & Pestalozzi St. track	100	400	150	1,150	250	1,550
Viaduct	....	.....	2,354	126,000	2,354	126,000
Connecting track North of Viaduct	....	.....	820	2,100	820	2,100
Totals for Main Switching tracks needed for A. B. B. interests	5,440	$42,050	7,304	$139,995	12,744	$182,045
					54%	86%

Main Switching Tracks Needed to Reach Outside Industries & Team Tracks.

	In public streets and alleys.		On private property.		Totals.	
	Length.	Value.	Length	Value.	Length	Value.
2nd St. from 85 N. of Utah St. to S. end	1,540	$3,850	....	.....	1,540	$3,850
2nd St. from S. S. Dorcas St. to North end	8,460	24,900	....	.....	8,460	24,900
Connecting "Y" between 2nd & Dorcas Sts.	250	1,075	380	950	630	2,025
Totals for Main Switching tracks for outside Industries & Team tracks	10,250	$29,825	380	$950	10,630	$30,775
					46%	14%

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

Valuation of St. Louis Manufacturers' Railway.

Jan. 13th, 1912.

Sidings Used by Anheuser Busch Brewing Interests.

	In public streets and alleys.		On private property.		Totals.	
	Length in feet.	Value.	Length in feet.	Value.	Length in feet.	Value.
Yard bet. Iron Mountain tracks & River	....	.....	24,400	$69,900	24,400	$69,900
1st Yard, bet. Arsenal & Iron Mt'n tracks	....	.....	2,270	10,000	2,270	10,000
Main Yard bet. Arsenal St. & Dorcas Sts. and East of 2nd St.	....	.....	9,820	39,380	9,820	39,380
A. B. B. A. Shipping Yard	....	.....	9,400	20,875	9,400	20,875
St. Louis Refrigerator Car tracks	....	.....	2,710	5,312	2,710	5,312
9th Street track	800	3,600	250	570	1,050	4,170
Private Car house track	....	.....	200	460	200	460
Tracks bet. 9th & 13th S. of Pestalozzi St.	....	.....	3,180	23,400	3,180	23,400
Tracks bet. 9th & 11th at Dorcas St.	....	.....	2,980	6,100	2,980	6,100
Tracks in 11th St.	1,730	13,275	.....	.....	1,730	13,275
Tracks bet. 11th & 13th Sts.	....	.....	3,170	13,855	3,170	13,855
Coal Storage Yard track	110	400	.....	.....	110	400
Tracks in 2nd St., North of Arsenal St.	610	2,535	.....	.....	610	2,535
Track at Stables N. side Dorcas St.	350	2,480	.....	.....	350	2,480
Adolphus Busch Glass Co. N. S. Dorcas St.	450	3,180	.....	.....	450	3,180
Totals	4,050	$25,470	28,380	$189,852	62,430	$215,322
					79%	81%

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

EXHIBIT BETTISON No. 5.

Valuation of St. Louis Manufacturers' Railway.

Jan. 13th, 1912.

Team Tracks and Sidings Used by Various Industries.

	In public streets and alleys.		On private property.		Totals.	
	Length in feet.	Value.	Length in feet.	Value.	Length in feet.	Value.
St. Louis Cooperage Co.	....	.....	550	$2,060	550	$2,060
St. Louis Basket & Box Co.	....	.....	520	900	520	900
Schroeter Coal Co.	....	.....	1,270	5,763	1,270	5,763
Team Tracks, Broadway & Pestalozzi St.	....	.....	940	2,975	940	2,975
St. Louis Dressed Beef & Provision Co.	....	.....	400	885	400	885
Nelson Morris & Co.	....	.....	850	1,770	850	1,770
Stecher Cooperage Co.	....	.....	780	1,825	780	1,825
Team Tracks at Ninth & Dorcas.	....	.....	1,000	3,530	1,000	3,530
Ganahal, Fidel Lumber Co.	....	.....	560	1,370	560	1,370
Team Track at Utah & 2nd St.	350	1,000	....	.....	350	1,000
De Kalb St. track, bet. Potomac & Utah	750	1,875	800	1,775	1,550	3,650
Team track at 2nd & Dorcas	....	.....	320	1,050	320	1,050
Track at 2nd & Louisa Sts.	300	875	....	.....	300	875
St. Louis Lumber Co.	....	.....	910	2,800	910	2,800

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Team Tracks at 2nd & Trudeau Sts.	300	950	230	550	530	1,500
Western Foundry & Sash Weight Co.	170	700	230	400	400	1,100
John Nooter Boiler Works	....	.....	300	690	300	690
Team Tracks at 2nd & Park Sts.	....	.....	2,530	5,950	2,530	5,950
Summit Coal & Mining Co.	270	1,440	....	.....	270	1,440
Team track at Rutger St.	370	1,890	....	.....	370	1,890
N. K. Fairbanks (End of Spur)	....	.....	130	270	130	270
Bradbury Marble Co.	....	.....	250	760	250	760
N. K. Fairbanks & Co. (in 2nd St.)	520	4,200	....	.....	520	4,200
Laclede Gas Light Co.	600	2,050	....	.....	600	2,050
	3,630	$14,980	12,570	$35,323	16,200	$50,303
					21%	19%

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

Analysis of Length and Value of St. Louis Manufacturers' Ry.

Jan. 13th, 1912.

Exclusive of Right of Way and Franchises.

	In public streets and alleys.		On private property.		Totals.	
	Length in feet.	Value.	Length in feet.	Value.	Length in feet.	Value.
Main Switching tracks required for use of Anheuser Busch Brewing Interests	5,440	$42,050	7,304	$139,995	12,744	$182,045
Sidings required for use of Anheuser Busch Brewing Interests	4,050	25,470	58,380	189,852	62,430	215,322
Total required for Anheuser Busch Brewing Interests	9,490	$67,520	65,684	$329,847	75,174 74%	$397,367 83%
Main Switching tracks required for Team Tracks & Industries	10,250	29,825	380	950	10,630	30,775
Sidings required for Team Tracks and Industries	3,630	14,980	12,570	35,323	16,200	50,303
Total required for Team tracks and other Industries	13,880	$44,805	12,950	$36,273	26,830 26%	$81,078 17%

Summary.

Total length and Valuation of Manufacturers' Ry.....	23,370	$112,325	78,634	$366,120	102,004	$478,445

About 19.32 Miles of track in all. Values shown are the approximate cost of Construction.

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

(Here follows diagram marked page 1059.)

EXHIBIT BETTISON No. 8.

Jan. 22nd, 1912.

Statement Showing, Approximately, What it Would Cost the "Iron Mountain" Road to Build Tracks to Reach and Serve Each of the Team Tracks and Outside Industries now Served Exclusively by the Manufacturers' Ry., Assuming that it Owned the Main Switching Tracks now Required for the Use of the Anheuser Busch Brewing Interests (Exclusive of Right of Way).

Name of industry or team track.	Cost of track to reach the industry or team track.	Cost of team track or industrial track.	Total cost.	Total lengths of tracks in feet.
Schroeter Coal Co.	.....	$5,763	$5,763	1,270
Team track 9th & Dorcas	.....	3,530	3,530	1,000
Nelson Morris Co.	.....	1,770	1,770	850
St. L. Dressed Beef & Prov. Co.	.....	885	885	400
Team tracks, Broadway & Pestalozzi	.....	2,975	2,975	940
Stecher Cooperage works	.....	1,825	1,825	780
Team Track 2nd & Utah Sts.	.....	1,000	1,000	350
Ganahal Fidel Lumber Co.	$2,400	1,370	3,770	1,420
New track in De Kalb St.	.....	3,650	3,650	1,550
Team track 2nd & Dorcas Sts.	.....	1,050	1,050	320
Team track 2nd & Louisa Sts.	2,725	875	3,600	910
Team tracks 2nd & Trudeau Sts.	2,375	1,500	3,875	1,280
Team track 2nd & Park Sts.	.....	1,500	1,500	560
Western Foundry & Sash Wt. Co.	750	780	1,530	850
John Nooter Boiler Works	.....	690	690	300
Bradbury Marble Co.	3,550	375	3,925	1,350
Summit Coal & Mining Co.	.....	1,440	1,440	270
Team Track at Rutger St.	.....	1,890	1,890	370
	11,800	32,868	44,668	14,770

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

1061 *Analysis of Terminal Facilities in Territory Contiguous to Manufacturers' Railway, St. Louis, Mo.*

Filed Mar. 12, 1915. W. W. Nall, Clerk.

1062 *Key.*

No.	Industries.	Facilities.
56	American Car & Foundry Co. (Wheel Department)	B
96	American Car & Foundry Co.	B
97	American Car & Foundry Co.	B-C
114½	American Car & Foundry Co.	B
123	American Brewing Co.	A
	Anheuser-Busch Brewing Association Interests:	
118	Anheuser-Busch Brewing Ass'n Building	D
120	Anheuser-Busch Brewing Ass'n Building	D
122	Anheuser-Busch Brewing Ass'n Building	D
121	Anheuser-Busch Brewing Ass'n Building	D
100	St. Louis Refrigerator Car Co.	D
101	St. Louis Refrigerator Car Co.	D
103	Anheuser-Busch Brewing Ass'n Building	D
105	St. Louis Brewers' Dried Grain Co.	D
106	Anheuser-Busch Brewing Ass'n Building	D
109	Anheuser-Busch Brewing Ass'n Building	D
95	Adolphus Busch Glass Co.	B-D
111	Anheuser-Busch Brewing Ass'n Building	D
124	Anheuser-Busch Brewing Ass'n Building	D
125	Anheuser-Busch Brewing Ass'n Building	D
102	Anheuser-Busch Brewing Ass'n Building	D
104	Anheuser-Busch Brewing Ass'n Building	D
126	Private Car House	D
114	Anheuser-Busch Brewing Ass'n Storage Yard	D
94	Anheuser-Busch Brewing Ass'n Stables	D
102½	Anheuser-Busch Brewing Ass'n Loading Yard	D
31	Ault Box Factory	A
32	Bannantine Galvanized Iron Mfg. Co.	B
15	Banner Buggy Co.	B-C
9	Barrett Mfg. Co.	B
11	Bradbury Marble Co.	D
86	Brueckmann Cooperage Co.	A
51	Buder Lumber Co.	A
5	Chicago Mill & Lumber Co.	B
47	Chivvis, W. R., Lumber Co.	B
36	Columbia Pretzel & Baking Co.	A
3	Cox & Gordon Packing Co.	B
43	Diamond Match Co.	B
83	Doerner, H. D. M.	A
110	Donk Bros.	C

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

1063

No.	Industries.	Facilities
4	Fairbank, N. K., Co.	B & D
12	Fairbank, N. K., Co.	D
10	Fairbank, N. K., Co.	D
61	Finck, J. C., Mineral Milling Co.	B
48	Fritz, G. J., Foundry & Machine Co.	A
18	Ganahl, John J., Lumber Co.	A
112	Ganahl, Fidel, Lumber Co.	D
117	Ganahl, Fidel, Lumber Co.	A
81	Goecke & Co., F. W.	B & C
67	Hager & Sons, C. Hinge Co.	A
45	Harris, Lloyd G. Lumber Co.	A
24	Heibel & Sons, P.	A
59	Helmbacher Forge & Rolling Mills Co.	B
16	Henschen & Co.	A
90	Hill & Bro., E. B.	A
66	Home Cotton Mills	A
13	Independent Coal Supply Co.	D
28	Inland Valley Coal Co.	B
25	Johanning Lumber Co.	A
73	Keller & Tamm Mfg. Co.	B-C
90½	Klauber, B. & Sons.	D
22	Koerner, Gus. (Hardwood Lumber)	B
89	Kuenze, A. Mfg. Co.	A
14	Laclede Gas Light Co.	B
23	Laclede Gas Light Co.	B
78	Larkin-Scheffer Chemical Co.	B
38	Little Lumber Co.	B
52	Loy-Lange Box Co.	A
35	Luehrmann, C. F., Hardwood Lumber Co.	B
33	Luehrmann, C. F., Hardwood Lumber Co.	B
39	Luehrmann, C. F., Hardwood Lumber Co.	B
115	Medart, Fred.	A
116	Medart Patent Pulley Co.	A
75	Meyer-Meinhardt Soda Water Co.	A
40	Miller Lightning Rod Co.	A
54	Missouri Red Granite Monument Co.	B
42	Monsanto Chemical Co.	B
2	Morris & Co., Nelson.	B
98	Morris & Co., Nelson	D
20	Nooter, John, Boiler Works.	D
82	Nulsen-Klein & Krausse Mfg. Co.	B-C
119	Obert Brewing Co., L.	A
60	Pauley Jail Building Co.	A
92	Peterson, L., Planing Mill Co.	A
55	Pioneer Cooperage Co. (Lumber Yard)	A
62	Pioneer Cooperage Co.	B
8	Plant, Geo. P. Milling Co.	B
28	Polar Wave Ice & Fuel Co.	B
74	Quellmalz, The Henry, Lumber Co.	B

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

1064

No.	Industries.	Facilities.
29	Reuter-Jones Mfg. Co.	A
41-44	St. Louis Architectural Iron Co.	B
107	St. Louis Basket & Box Co. (Note)	B-D
84	St. Louis Bell Foundry	A
108	St. Louis Cooperage Co. (Note)	B-D
71	St. Louis Cordage Co. (Warehouse)	B
93	St. Louis Cotton Batting & Mfg. Co.	A
99	St. Louis Dressed Beef & Provision Co.	D
76	St. Louis Gas & Gasoline Engine Co.	A
7	St. Louis Iron & Machine Works	B
53	St. Louis Lightning Rod Co.	A
57-58	St. Louis Lumber Co.	B-D
34	St. Louis Rattan Works (Lumber Yard)	A
30	St. Louis Rattan Works	A
69	Schaeffer Bros. & Powell Mfg. Co.	A
113	Schaefer, Ganahl & Paul Planing Mill Co.	A
49	Schaeffer, J.	A
50	Schoenberg, F. E., Mfg. Co.	A
28	Schroeter Coal Co.	B
91½	Schroeter Coal Co.	D
64	Shultz Belting Co. (Tan Bark Yard)	A
63	Shultz Belting Co.	B
72	Sligo Iron Store Co. (Warehouse)	B
80	Southern Cooperage Co.	B
88	Standard Furniture Mfg. Co.	A
37	Staudte & Rueckoldt Mfg. Co.	A
65	Stecher Cooperage Co.	B
85	Stute & Co.	A
21	Stuckstede, The Hy. Bell Foundry Co.	A
1	Swift & Co.	B
70	Union Sand & Material Co.	B
91	Verbarg, C. H., Boiler Works	A
27	Victor Iron Works	B
87	Waldstein Lumber Co.	A
26	Warner, E. H.	A
77	Wayne, A. Mfg. Co. (Lumber Yard)	A
79	Wayne, A. Mfg. Co.	B
17	Weisert Bros. Tobacco Co.	A
6	Western Carriage Co.	A
19	Western Foundry & Sash Weight Co.	D
68	Western Oil Pump Co.	A
46	Western Refrigerator & Mfg. Co.	A

[Endorsed:] Filed Mar. 12, 1915. W. W. Nall, Clerk.

1065 *Team Tracks.*

A. St. Louis Iron Mountain & Southern Ry.
B. Wiggins Ferry Co. (Load at any point from Chouteau Av. (St. Louis Transfer Ry.) to Saint George Street).
C. Manufacturers' Railway Co.

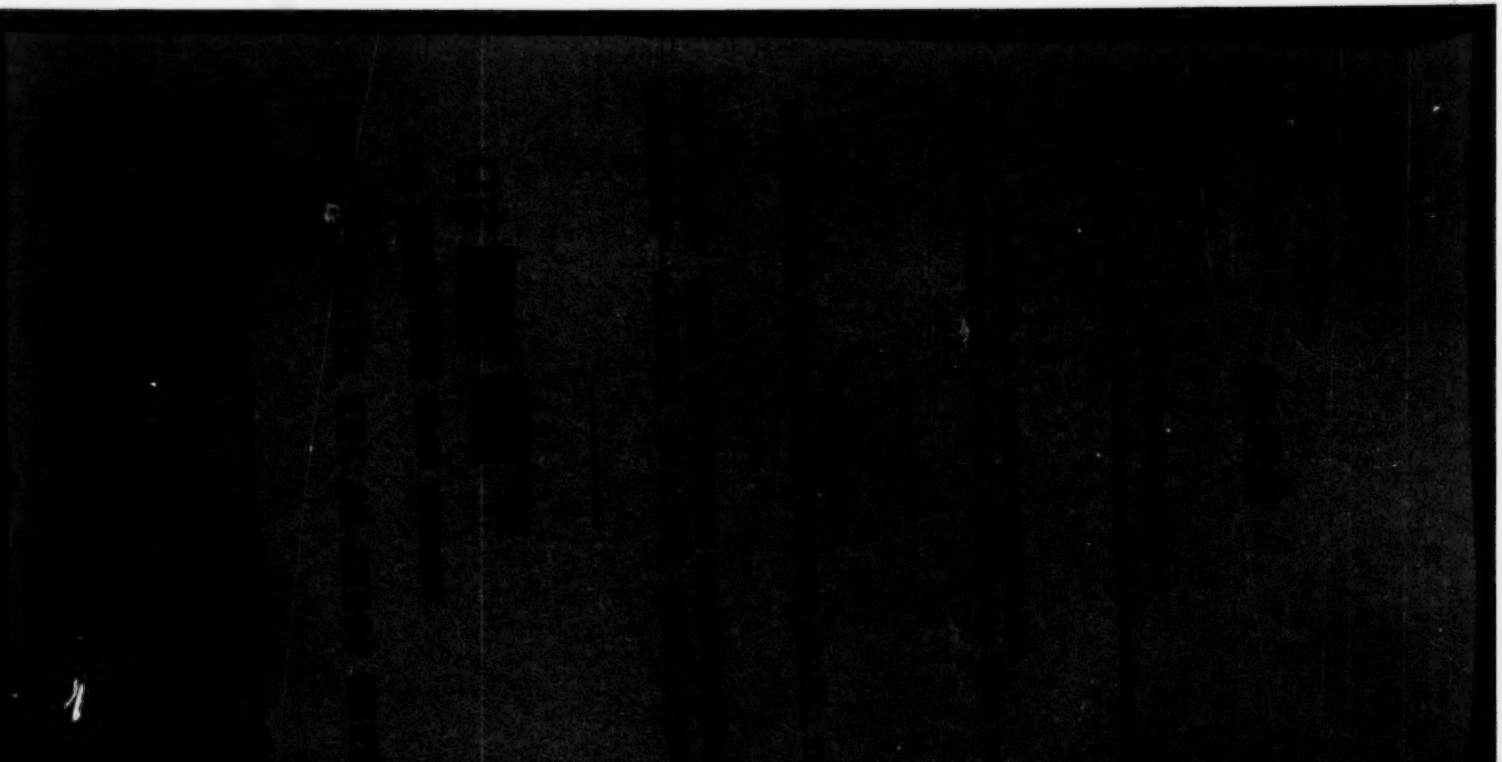
Explanation of Facilities.

A. No Private Siding.
B. Private Siding connecting with the Saint Louis Iron Mountain & Southern Railway Company.
C. Private Siding connecting with Wiggins Ferry Co.
D. Private Siding connecting with Manufacturers' Railway Company.

NOTE.—St. Louis Iron Mountain & Southern Ry. track runs directly to these plants. Manufacturers' Ry. track is located to the Northwest and storage houses are between that Company's switch and the plants of these Companies.

[Endorsed:] Filed Mar. 12, 1915. W W. Nall, Clerk.

Endorsed on cover: File No. 24,761. E. Missouri D. C. U. S. Term No. 487. Manufacturers Railway Company and St. Louis Southwestern Railway Company, appellants, vs. The United States and Interstate Commerce Commission. Filed June 7th, 1915. File No. 24,761.



(24,762)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 488.

MANUFACTURERS RAILWAY COMPANY, ANHEUSER-BUSCH BREWING ASSOCIATION, ET AL., APPELLANTS,

vs.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 7, 1916.

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a THE UNITED STATES OF AMERICA:

To the United States of America and the Interstate Commerce Commission and John T. Barker, Attorney General of the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an order allowing an appeal, filed in the Clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein Manufacturers' Railway Company, a corporation is petitioner and appellant and Anheuser-Busch Brewing Association et al., are intervening petitioners and co-appellants and you are defendants and appellees, to show cause, if any there be, why the final decree rendered against the said appellants, as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Elmer B. Adams, Circuit Judge and Judge of the District Court of the United States within and for the Eastern District of Missouri, this 12th day of May in the year of our Lord one thousand nine hundred and fifteen.

ELMER B. ADAMS,
United States Circuit Judge for the Eastern District of Missouri.

b Service of a copy of the within citation is hereby admitted this 19th day of May, A. D. 1915.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
JOS. W. FOLK,
Counsel for the Interstate Commerce Commission.

Service of a copy of the within citation is hereby admitted this 22nd day of May, A. D. 1915.

JOHN T. BARKER,
Attorney General of the State of Missouri.

Endorsed: No. 4385. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. Manufacturers Railway Company, Petitioner, Anheuser-Busch Brewing Ass. et al., Inter'g Petitioners, vs. United States of America, Respondent, Interstate Commerce Commission, Intervening Petitioner. Citation. Filed May 24, 1915. W. W. Nall, Clerk.

1 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Be it remembered, that heretofore, to-wit on the 14th day of December, A. D. 1914, there was filed in the Office of the Clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, a certain Petition to set aside in part, and to enjoin in part, the enforcement of an order of the Interstate Commerce Commission, wherein the Manufacturers Railway Company, is petitioner, and the United States of America is Defendant, which said petition is numbered 4385, and is in words and figures, as follows, to-wit.

(Petition.)

2 Equity Docket No. 81.

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4385.

MANUFACTURERS RAILWAY COMPANY, Petitioner,
vs.
THE UNITED STATES OF AMERICA, Defendant.

Petition to Set Aside in Part and to Enjoin in Part the Enforcement of an Order of the Interstate Commerce Commission.

Sidney F. Andrews, Counsel for Petitioner.

3 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4385.

MANUFACTURERS RAILWAY COMPANY, Petitioner,
vs.
THE UNITED STATES OF AMERICA, Defendant.

Petition to Set Aside in Part and to Enjoin in Part the Enforcement of an Order of the Interstate Commerce Commission.

To the Judges of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri:

Your petitioner, Manufacturers Railway Company, a "Railroad Corporation," organized and existing under the laws of the State of

Missouri, and a citizen of said State, having its lines and its principal place of business within said State, hereby respectfully invokes the jurisdiction conferred upon this Honorable Court by the act of Congress known as "The District Court Jurisdiction Act," approved
4 October 22, 1913, by which the jurisdiction theretofore vested in the "Commerce Court" was transferred to the several District Courts of the United States, and to that end Your petitioner respectfully represents and shows:

1. That the United States is made defendant herein because petitioner, by this proceeding, seeks to suspend in part, set aside in part, and enjoin as void in part an order of the Interstate Commerce Commission (hereinafter for brevity referred to as the "Commission"), made under date of July 10, 1914, although in fact made on, to-wit, November 5, 1914, in a cause before the Commission numbered 3151, wherein Your petitioner, Manufacturers Railway Company (a railroad corporation organized under the laws of the State of Missouri, engaged in the City of St. Louis, as a common carrier of freight moving in interstate commerce, and hereinafter for brevity referred to as the "Railway") was a complainant, together with certain of the shippers over its line, namely, Anheuser-Busch Brewing Association, Stecher Cooperage Works, Independant Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel-Ganahl Lumber Company, St. Louis Cooperage Company, and Western Foundry & Sash Weight Company, each of which was and is a manufacturing and business corporation organized under the laws of the State of Missouri, a citizen of said State, with its plant or place of business located in upon or conveniently accessible to, the lines of the Railway.

That in said proceeding before the Commission, the following railroad corporations were made defendant: St. Louis, Iron Mountain and Southern Railway Company, The Missouri Pacific
5 Railway Company, The Wabash Railroad Company, Missouri, Kansas and Texas Railway Company, St. Louis and San Francisco Railroad Company, St. Louis Southwestern Railway Company, each of which is a railroad corporation organized under the laws of the State of Missouri as a common carrier; Chicago and Eastern Illinois Railway Company, Chicago, Burlington and Quincy Railroad Company, The Chicago and Alton Railroad Company, Chicago, Peoria and St. Louis Railway Company of Illinois, Chicago, Rock Island and Pacific Railway Company, Illinois Central Railroad Company, Vandalia Railroad Company, each of which is a railroad corporation organized under the laws of the State of Illinois as a common carrier; The Baltimore and Ohio Southwestern Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Toledo, St. Louis and Western Railroad Company, each of which is a railroad corporation organized under the laws of the State of Indiana as a common carrier; Louisville and Nashville Railroad Company, a railroad corporation organized under the laws of the State of Kentucky as a common carrier; Mobile and Ohio Railroad Company, a railroad corporation organized under the laws of the State of Alabama as a common

carrier; and Southern Railway Company, a railroad corporation organized under the laws of the State of Virginia as a common carrier.

That since the filing of said complaint, receivers have been duly appointed, and are now operating various of the lines of said defendant corporations, to-wit: Edward B. Pryor as Receiver of The Wabash Railroad Company; William C. Nixon, William B. Biddle and James W. Lusk, as Receivers of St. Louis and San Francisco Railroad Company, and William J. Jackson and Edwin W.
6 Winter, as Receivers of Chicago and Eastern Illinois Railroad Company.

Since the filing of said complaint, the properties of said Chicago, Peoria and St. Louis Railway Company of Illinois have been transferred to the Chicago, Peoria and St. Louis Railroad Company, a railroad corporation organized under the laws of the State of Illinois, as a common carrier, and are now being operated by Bluford Wilson and William Cotter, as Receivers of said Railroad Company.

That the railroads (other than the Manufacturers Railway Company), hereinafter named, are for brevity hereinafter referred to as the "Trunk Lines," and each of said trunk lines was and is a common carrier of freight moving in interstate commerce over its line or lines of railway entering St. Louis or East St. Louis, and being transported to or from points on the line of said Manufacturers Railway Company.

That each of the parties upon whose complaint or petition the said order of the Commission was made, resides and has its principal office in the City of St. Louis, State of Missouri, within the Eastern Division of the Eastern Judicial District of Missouri, and the matters so complained of before the Commission arose in said City of St. Louis.

2. That there are many other persons, firms and corporations engaged in manufacturing and mercantile pursuits whose plants or places of business are located upon and along the lines of Your petitioner, and who are shippers and receivers of freight moving in interstate commerce and transported over its lines, in connection with other common carriers, many of which shippers are de-
7 pendent solely upon Your petitioner for the transportation, forwarding and receipt of goods and merchandise manufactured, used or dealt in by them, and whose plants or places of business have no track connection with any common carrier other than Your petitioner; that there are others of such shippers so located as to be served not only by the lines of Your petitioner, but also, in competition therewith, by the lines of other railroad companies herein named.

3. That at the times referred to in said complaint before the Commission, Your petitioner was, and has since then been, and is now, a railroad corporation, organized under the laws of the State of Missouri as a common carrier for public use in the conveyance of property, with all the powers of such carrier, including the power to exercise the right of eminent domain.

That the status of Your petitioner as such common carrier, was and is recognized by the City of St. Louis, and the State of Missouri, within which jurisdictions it held and holds itself out to a considerable shipping public, as a common carrier of freight moving in interstate commerce; that under the laws of said City and State, as well as of the United States, the public has the right to demand and use the facilities of Your petitioner, and to demand service of it as a common carrier of such freight, and during all times herein referred to, Your petitioner has used all of its facilities in the service of the public as such a common carrier, subject to the laws of said City and State. That Your petitioner was and is a common carrier, and not a "plant facility" or "tap line."

That at all times herein referred to, Your petitioner has also complied with all of the requirements and regulations of
8 the "Act to Regulate Commerce," and has conducted its business subject to and in accordance with the provisions of said act, and with the rules, orders and requirements of the Commission.

4. That the trunk lines herein referred to constitute substantially all of the carriers over whose lines is transported substantially all freight which enters or leaves the City of St. Louis. That some of said trunk lines, to-wit, St. Louis, Iron Mountain and Southern Railway Company, Missouri Pacific Railway Company, St. Louis and San Francisco Railroad, The Wabash Railroad Company, Chicago, Rock Island and Pacific Railway Company, and the Chicago, Burlington and Quincy Railway Company, not only have lines into the City of St. Louis over which they transport freight destined to or from points upon their own said lines, but also have terminals of their own within the switching limits of St. Louis, with which terminals they perform terminal transportation services, in connection with the line haul performed partly or wholly, by other common carriers in respect of freight moving in interstate commerce to and from points within the switching limits of St. Louis.

That others of said trunk lines have no tracks of their own into the City of St. Louis, but handle all freight moving by them in interstate commerce and destined to or from points within the switching limits of St. Louis, in connection with some other of said trunk lines, the latter performing the necessary terminal transportation services, in the City of St. Louis, or in connection with the Terminal Railroad Association of St. Louis, (hereinafter for brevity referred to as the "Terminal Association"), or some
9 of its subsidiary or tenant common carrier corporations, or in connection with Your petitioner.

That in respect of terminal transportation services rendered within the switching limits of the City of St. Louis as to freight moving in interstate commerce, such services are thus performed by either such of said trunk lines (being part owners of the Terminal Association) as have such terminals of their own, or by subsidiaries of such trunk lines, or by the Terminal Association or its subsidiary or tenant lines, or by Your petitioner, and in no other manner.

That the Terminal Association is a terminal and switching railroad, organized as a railroad corporation under the laws of the State of Missouri, all of the shares of stock of which were and are owned by the following trunk lines, to-wit: Baltimore and Ohio Southwestern Railway Company; Chicago, Burlington and Quincy Railroad Company; Chicago and Alton Railroad Company; Chicago, Rock Island and Pacific Railway Company; Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Illinois Central Railroad Company; Louisville and Nashville Railroad Company; The Missouri Pacific Railway Company; Missouri, Kansas and Texas Railway Company; St. Louis and San Francisco Railroad Company; St. Louis Iron Mountain and Southern Railway Company; Southern Railway; Vandalia Railroad Company; The Wabash Railroad Company; and the St. Louis Southwestern Railway Company.

That the Terminal Association owns or controls various subsidiary common carrier corporations, some of which are operated under their several charters as operating carriers, among them being the "St. Louis Transfer Railway," a railroad corporation
10 organized under the laws of the State of Missouri, which does business within the switching limits of St. Louis as a terminal or switching carrier, and has tracks connecting with the tracks of Your petitioner and interchanges with Your petitioner, freight moving in interstate commerce.

That the Terminal Association and each of its subsidiary lines, although operating under their own names and charters, are in fact controlled by, and operated under the direction of, representatives of the trunk lines above named as proprietors of the Terminal Association and are held out to the public as independently operating common carriers.

That the extent of the control by the Terminal Association and its proprietary and subsidiary lines, over all freight moving in and out of St. Louis, is such that no freight can enter or leave said city except over the lines of the Terminal Association or its subsidiary or proprietary lines or their subsidiary, or tenant lines; and the only common carrier corporation which competes with the Terminal Association, its subsidiary or proprietary lines, in terminal transporation within the City of St. Louis, of freight moving in interstate commerce, is Your petitioner.

5. That Your petitioner was incorporated in 1887, and shortly thereafter constructed a line of railway within the City of St. Louis under an ordinance or franchise duly granted by said city, by which franchise Your petitioner was authorized to construct and operate railroad tracks over and across certain streets and alleys in said city, from a point near the plant property of the Anheuser-Busch Brewing Association, eastwardly to a point of connec-
11 tion with the lines of the St. Louis, Iron Mountain and Southern Railway Company.

That after said line of railway had been constructed, Your petitioner leased the same, together with such additional tracks as might thereafter be constructed to the St. Louis, Iron Mountain &

Southern Railway Company, which as lessee thereof, held possession of and operated all the tracks of Your petitioner until on or about January 27, 1909.

That during said leased period of more than twenty years, the trunk lines applied the St. Louis rate to all shipments of freight destined to or from points upon the lines of Your petitioner so that shippers located upon, along or near said line who used the same for the transportation of freight, received transportation services over said line, and made and received shipments at or near their various plants or places of business located upon industrial, private, and other switches, or near said line, at the St. Louis rates, without paying any freight charges in addition to said St. Louis rates, for the transportation of said freight over said lines of Your petitioner.

6. That while the lines of Your petitioner were under lease as aforesaid, various additional franchises were granted to Your petitioner by the City of St. Louis, authorizing it to build numerous additional main, spur, and switch tracks, on, along and across various streets and alleys in the City of St. Louis, thus making it possible for Your petitioner, by additional tracks and other facilities, to extend its transportation facilities, through public delivery yards and public and private sidings, to many additional shippers located in St. Louis. That pursuant to such franchises,

12 Your petitioner did largely extend its systems of main and switch tracks, thus extending its facilities to many additional shippers, and did also acquire and construct as a part of its railroad facilities, extensive storage, distribution, and interchange yards; and for the purpose of making track connection with the St. Louis Transfer Railway (thus directly reaching the facilities of the Terminal), in addition to its previous track connection with the St. Louis, Iron Mountain & Southern Railway, Your petitioner did expend large sums of money in constructing a viaduct and railroad yards, all to the end that shippers over its line might have the benefit of a direct connection with the rails of the Terminal Association, as well as with the St. Louis, Iron Mountain & Southern Railway, and might have and use all such extended facilities in interstate commerce.

That in and by one of said franchises granted by the City of St. Louis to Your petitioner, the latter was permitted and required, and it obligated itself, to maintain, construct and operate car ferries to cross the Mississippi River, and a belt line of at least seven miles in or around East St. Louis, to the end that Your petitioner might thereby directly and over its own rails enter into competition for cross river interstate traffic, with the Terminal Association and its subsidiaries.

7. That at the time when said franchise last above referred to was obtained, and for a long time prior thereto, said Terminal Association was, and Your petitioner, upon information and belief, avers that it still is, an unlawful monopoly or combination existing in violation of the Act of Congress known as the "Sherman Antitrust Act," being "An Act to protect trade and commerce

against unlawful restraints and monopolies," approved July
13 2, 1890, and of Acts amendatory thereof, and was and is maintained to the injury of the shipping public of St. Louis, and to the injury of Your petitioner as a competing and connecting terminal carrier.

8. Your petitioner further shows: that on or about January 27, 1909, the St. Louis, Iron Mountain & Southern Railway Company ceased to operate the lines of Your petitioner, and thereupon petitioner itself began and has since then engaged in the operation of said lines, for the purpose, with its enlarged system of railway facilities above referred to, of engaging in competition with the Terminal Association and its subsidiaries, and with such trunk lines and their subsidiaries, as had terminals of their own within the City of St. Louis, in the business of rendering terminal services, in respect of the transportation of freight moving in interstate commerce to or from points upon the lines of Your petitioner, in that part of St. Louis known as "South St. Louis."

That immediately after Your petitioner began to operate its lines, it negotiated with the several trunk lines above named, and with other common carriers, for the purpose or arranging to establish and make effective through routes and through and joint rates, covering the transportation of freight moving in interstate commerce over the lines of Your petitioner in connection with the lines of other carriers; and as a result of such negotiations said trunk lines and other railroad companies, did co-operate with Your petitioner in establishing and making effective such through routes, and through and joint rates with all of the railroads entering the City of St. Louis, and pursuant to such arrangements, appropriate tariffs were duly
14 published, filed and posted, as required by the Act to Regulate Commerce, and all acts amendatory of and supplemental thereto, and such tariffs and rates thereupon became duly effective, and remained so effective until wrongfully and unlawfully cancelled as of March 1, 1910, as hereinafter alleged.

That under said tariffs, the trunk lines and other railroad companies being parties thereto, authorized and agreed to such rates, and to such divisions with Your petitioner of said rates (said divisions being effected in the form, either of technical divisions of joint rates, or of absorptions by the trunk lines into the St. Louis rate, of the charges agreed to be paid to Your petitioner, for its part of the service of transportation in handling said freight over its lines), or to such practices in respect thereto, and to such regulations and practices in respect of the interchange of cars, the operation of said routes, the handling of traffic, the use of facilities, and all matters affecting rates and charges as between connecting lines, that Your petitioner received reasonable compensation for its portion of the transportation services without discrimination against it; and the shippers over the lines of Your petitioner received and made their interstate shipments at the St. Louis rates, without paying in addition thereto, for the transportation services of Your petitioner.

9. That from the times, when said tariffs establishing with Your petitioner such through and joint rates and divisions or absorptions

thereof and practices and regulations in respect thereto became effective, and since then, until, to-wit, March 1, 1910, Your petitioner conducted its transportation business thereunder, and,

15 for the convenience and accommodation of all the shippers who used its lines, it interchanged with other carriers large quantities of freight moving in interstate commerce, destined to or from points on its line, without discrimination by the trunk lines against Your petitioner, and without the shippers or receivers of such freight, located upon or near its lines, being required to pay any charge for the transportation over the Railway except the St. Louis rate, the charges of Your petitioner for its portion of the service having been absorbed into or paid for out of the St. Louis rates, pursuant to the said tariffs above referred to.

That since Your petitioner thus commenced to operate its lines, and particularly since said through routes and through and joint rates (with divisions), and such practices and regulations, were established and applied as aforesaid, the business of shippers upon its line has greatly prospered as compared with their progress during the period while said line was under lease to the St. Louis, Iron Mountain & Southern Railway Company, because of the superior conveniences, facilities and service afforded to such shippers by Your petitioner as compared with that previously afforded by the St. Louis Iron Mountain & Southern Railway, and in competition with said St. Louis, Iron Mountain & Southern Railway Company, and St. Louis Transfer Railway.

That until said cancellations effective March 1, 1910, the tariffs making effective the rates, divisions, allowances, regulations, and practices which obtained prior thereto, had long been on file with the Commission, without criticism or objection by the Commission or any one else.

16 10. That for many years prior to the time when Your petitioner began to operate its own lines, and ever since then (until, to-wit, March 1, 1910), it was and is the universal custom of all carriers making deliveries or receiving shipments within the switching limits of St. Louis, to apply the St. Louis rates to all team tracks, public delivery yards, public switches, and private yard, industrial, and plant switches, without making any charge in addition to the St. Louis rate for the terminal services, including the "spotting of cars," which constituted a part of the transportation of such freight to or from said points of origin or destination within the City of St. Louis; and that until March 1, 1910, the practice aforesaid was applied to points of origin and destination located upon the lines of Your petitioner, as well as to those located upon the lines of other carriers within the switching limits of St. Louis.

That by said practice there was created, established and maintained by the common carriers operating within the City of St. Louis and by the trunk lines interchanging freight with them, a "blanket" or "zone," within the City of St. Louis, which included therein all the shipping stations, team tracks, public delivery yards, public switches and private yard, industrial and plant switches, located on or connected with the line of Your petitioner, and within which said zone

all shippers having access to said industrial spur tracks, private switches, and private or public team tracks, made and received their shipments at the St. Louis rates, without charge being added for such terminal service. That while said practice was being applied by the other carriers to the lines of Your petitioner, Your petitioner was induced thereby to largely extend its tracks so as to reach many additional industries and shippers, and some of its shippers
17 were induced to locate their places of business or manufacture upon the lines of Your petitioner in order thereby to avail themselves of the St. Louis rates at their plant switches, and others were induced to further extend and add to their places of business or plants so located, relying upon said practice above referred to and its continuance, and in the belief that they were entitled to and would continue to receive and make their interstate shipments of freight at the St. Louis rate, without having to pay any additional charge for the transportation over the lines of Your petitioner.

11. Your petitioner further shows, upon information and belief: that after it had so established, extended and operated its lines and facilities as aforesaid, and after its business had substantially increased, and after it had become a real and rapidly growing competitor in South St. Louis of the St. Louis, Iron Mountain & Southern Railway Company and of the St. Louis Transfer Railway, the fact was called to the attention of the Terminal Association that Your petitioner had announced its intention, and was about, to build car ferries and lines by which it would enter into active competition with the Terminal Association and its subsidiaries, in the transportation of freight across the Mississippi River, between the cities of St. Louis and East St. Louis; that thereupon in furtherance of the unlawful monopoly then held by the Terminal Association to the injury of Your petitioner and of the shipping public of St. Louis, and for the purpose of preventing Your petitioner from becoming such a competitor, and from being any longer a competitor of the Terminal Association or its subsidiary or proprietary lines in the terminal transportation of freight moving in interstate com-
18 merce within the switching limits of St. Louis, and for the purpose of subjecting Your petitioner to unjust, undue and unlawful discriminations, in violation of the provisions of the Act to Regulate Commerce, and of denying to it rights granted to it by the laws of the United States, and for the purpose of preventing shippers over its line from getting and making their shipments at the St. Louis rates, the president of the Terminal Association brought before the members thereof, being representatives of the proprietary trunk lines, the question of the through routes and through and joint rates which had theretofore been established by said trunk lines with Your petitioner, and pursuant to which Your petitioner received reasonable compensation by way of divisions or allowances out of said through rates, and shippers using its lines were then receiving and making their shipments at the St. Louis rates; and said president or other members of said Terminal Association, urged that said through routes and joint rates, and divisions and allowances or absorptions and practices and regulations, relating thereto, be

discontinued; that thereupon it was arranged or agreed between the owning members of the Terminal Association, attendant upon said meeting, that pursuant to the purpose aforesaid a further meeting should be called and held by representatives of all of the lines, members of said Terminal Association, and by representatives of its subsidiary or tenant lines, including all of the defendants hereafter named in said complaint before the Interstate Commerce Commission.

12. Your petitioner further shows upon information and belief: that such later meeting was held in December, 1909, attended
19 by representatives of all the said lines of railroad, members of the Terminal Association, and by the other lines which were made defendants in said complaint and by officers of the Terminal Association; that at said meeting, or later meetings, said lines entered into an unlawful combination, conspiracy, understanding or agreement (violation of the Sherman Anti-Trust Act, and of the Act to Regulate Commerce), with each other, and each with all of the others, but within the knowledge or consent at the time of Your petitioner, that by joint and concerted action of all the said carriers having tariff relations with Your petitioner, all through and joint rates then in effect, together with all divisions or absorptions thereof, covering shipments destined to or from points upon the lines of the Railway, and all of said practices and regulations in respect thereto, should be discontinued and cancelled as of March 1, 1910, and that notices of such cancellations should be sent by each of said lines to Your petitioner, and that said trunk lines would thereafter act together and in the same manner in respect of the rates, regulations and practices affecting Your petitioner and affecting shippers using its lines; that each and all of said agreements or understandings were intended to further the said unlawful monopoly of the Terminal Association, and to prejudice Your petitioner and all shippers using its lines; that at one of said meetings a prescribed form for such letter or notice was agreed to by all of said carriers, as that so to be sent by each, and it was further agreed that each of said carriers should send its letter, when prepared, to the president of the Terminal Association, who was neither an officer of nor in any way associated with any of said individual carriers except as an officer of the Terminal Association, and that if and when such letters
20 had been received by him from all such carriers, not omitting any one of them, then all of such notices should be mailed by him to Your petitioner; and said carriers then or thereafter, and pursuant to the same purpose and conspiracy, further agreed to issue appropriate tariffs for filing with the Commission, evidencing all such cancellations, and to send the same to said president, who was to file the same, if and when the appropriate tariffs of all of said carriers, not omitting any one of them, had been received by him; that pursuant to said conspiracy, each of said carriers did thereupon send to said president its letter or notice addressed to Your petitioner, announcing an intended cancellation of said rates, divisions, practices, regulations, and allowances, and did further send to said president tariffs ready for filing with the Commission, evidencing the cancellation of

said joint rates and of the divisions or absorptions of the charges of Your petitioner; that the said cancelling tariffs so sent to said president, were thereupon filed by him with the Commission, and purported to become effective on or about the first day of March, 1910, whereby each of said carriers, parties to said conspiracy, wrongfully and unlawfully cancelled and annulled the through and joint rates, and the divisions, absorptions, regulations, practices and allowances in respect thereto, which had been provided by the tariffs long existing prior to said date, as hereinbefore alleged, so that from and after said first day of March, 1910, there were no longer on file with the Commission tariffs evidencing joint rates from or two points on the lines of Your petitioner, under which shippers using its lines could make or receive shipments at points upon said lines, at the St. Louis rates, but they were thereafter required to pay, in addition to the St. Louis rates, the charges
21 of Your petitioner for its service in transporting such freight over its lines, and under which Your petitioner received the benefit of through routes with joint rates, and divisions thereof, or allowances out of such rates, or the benefit of such practices or regulations in respect of rates, or charges in compensation for its transportation services, or the handling of traffic, as would avoid unjust and undue discriminations against Your petitioner; that notwithstanding the fact that the trunk lines thus cancelled said tariffs applicable to shipments to or from points on the lines of Your petitioner, they did not then nor thereafter cancel their tariffs affecting like shipments to or from points within the St. Louis "zone or blanket," located on the lines of the Terminal Association or of its proprietary or subsidiary lines, which were and are terminal carriers competing with Your petitioner, the lines of said competing terminal carriers being used by business competitors of shippers on the lines of Your petitioner, but have at all times since and do still continue to observe in respect of all points of origin and destination within said "zone or blanket" being the City of St. Louis, located on the lines of any common carrier, except those located on the lines of Your petitioner, the general custom of applying the St. Louis rate, without any additional charge for terminal transportation services.

13. Your petitioner further shows upon information and belief: that the said acts and conduct of said trunk lines, members of the Terminal Association, and of their said respective subsidiary and tenant lines, were and are an unlawful conspiracy, confederation and combination entered into for the sole purpose of injuring Your petitioner and the shipping public of St. Louis, and of impairing and crippling Your petitioner and the service being rendered
22 by it to the public, and of restraining and destroying the competition which Your petitioner had theretofore created and was creating; and said acts and conduct were and are in violation of said Sherman Anti-trust Act and of the Act to Regulate Commerce; that said unlawful conspiracy was and is in furtherance of the said unlawful monopoly held by said Terminal Association.

14. And Your petitioner further shows, upon information and belief; that said unlawful conspiracy has since to-wit, December, 1909,

been continued by said Terminal Association, and by many of its proprietary lines, and by some or all of its and their tenant or subsidiary lines, and has caused and is still causing such lines and each of them, so continuing such conspiracy, by joint and concerted action, to refrain, and to compel others of them to refrain, from voluntarily entering into my arrangement with Your petitioner for the establishment of joint routes and rates applicable to points on its lines, no higher than rates to other points in said St. Louis zone or blanket contemporaneously in effect, or for divisions of such joint rates, or for the absorption into the St. Louis rate of any charge for the transportation services of Your petitioner, or for any practices or regulations by which shippers over the lines of Your petitioner will again be enabled to make and receive their shipments at the St. Louis rates. And said conspirators will refrain from voluntarily entering into any tariff arrangements with Your petitioner, as the result of which it will again be accorded its rights under the laws of the United States, as a connecting carrier performing a part of the transportation services of freight moving in interstate commerce,

23 including the rights to have established and maintained through routes with joint rates applicable thereto, and with allowenaces or divisions thereof, and with such practices and regulations in respect thereto as will enable Your petitioner to receive out of the St. Louis rates reasonable and compensatory remuneration for its transportation services, all without subjecting it to undue, unjust and unlawful discriminations by other carriers; that the continuance of said conspiracy operates and will continue to operate to the great prejudice and disadvantage of Your petitioner and to its shippers, in that it will thus prevent said shippers from having the St. Louis rates applied to their shipments over the Manufacturers Railway, while at the same time the trunk lines and the Terminal Association and their and its subsidiaries, and tenant lines, are applying the St. Louis rate to all shipments made or received by the competitors of such shippers located within the switching limits of the City of St. Louis, at points upon the lines of said trunk lines or upon the lines of the Terminal Association or its or their subsidiaries, or tenant lines.

15. Your petitioner further shows that said cancellations effective March 1, 1910, and the new rates, practices and regulations established thereby, were unreasonable, unjust, unlawful and unduly discriminatory and prejudicial, and in violation of the act know as the "Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and operated to the irreparable damage of Your petitioner and of shippers using its lines in that:

(*a*) They caused to be effective on and after March

24 1, 1910, in respect of interstate shipments to or from points upon the lines of Your petitioner, new rates which were higher than had theretofore been in effect, thus unreasonably increasing the rates to and from all points on the lines of Your petitioner, as well as creating unjust and undue discrimination against Your petition in making its lines less desirable and more expensivo

to use than the lines of its competitors and thus also subjecting its shippers to the payment of unreasonable and discriminatory rates and charges.

(*b*) They subjected Your petitioner and all shippers using its lines to new rates and practices which created unjust, unreasonable and unlawful discrimination, disadvantage and prejudice, to such shippers, in that they required all such shippers to pay a charge for transportation service in addition to the St. Louis rate, contrary to the custom hereinbefore alleged as applicable to all points of origin and destination within the switching limits or rate zone of the City of St. Louis, and at the same time left in effect the St. Louis rate as applicable to all shipments to or from shipping points, used by business competitors of said shippers located on the lines of the Terminal and of certain of said truck lines within said switching limits; and they thereby subjected Your petitioner, as a connecting and competing carrier, to unjust discriminations in that they refused to pay it out of the St. Louis rates any compensation for its terminal services in hauling interstate freight from and delivering it to said trunk lines, through said Terminal Association or subsidiary lines, while at the same time paying out of said rate the charges of other connecting carriers performing within said City of St. Louis identically the same character of service as that performed by Your Petitioner.

25 (*c*) They deprived Your petitioner of its property without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States.

(*d*) They denied to Your petitioner its rights under the laws of the United States, to the establishment and maintenance over its lines in connection with those of the trunk lines of through routes with through and joint rates applicable thereto, and with reasonable divisions of such rates or allowances out of them, and with such practices and regulations in respect of such traffic and rates, as would result in reasonable compensation to Your petitioner out of the St. Louis rates, for its services in the transportation of freight moving in interstate commerce.

16. Your petitioner further shows: that upon and at all times after receiving said notices of cancellation, it made and continued to make diligent efforts to agree with the trunk lines and each of them, for a voluntary re-establishment of joint routes and through and joint rates, with such divisions or absorption of rates, and such practices or regulations in respect thereto, that Your petitioner might again receive its said lawful rights as a connecting carrier, and that all shippers using its lines might continue to receive and make their shipments at the St. Louis rate, and thus be relieved of the said unreasonable new rates, and of the said undue preference and discrimination, but that the trunk lines or many of them, pursuant to said unlawful conspiracy, refused and neglected to take any such voluntary action, until about the time of the first Report of the Commission, which is hereinafter referred to.

26 17. That upon failing in said efforts, Your petitioner, together with certain of the shippers using its line, filed their

said complaint with the Interstate Commerce Commission, on behalf of Your petitioner and of all shippers using its lines.

That said complaint set out in detail a description of the said tariffs evidencing the said joint routes and rates, and divisions, practices, regulations and absorptions thus wrongfully cancelled, set out in substance the facts hereinbefore alleged, and as to Your petitioner and its said complaining shippers it also showed in substance:

That the said through routes and through and joint rates established by said Trunk lines with the Railway by the said tariffs in effect prior to March 1, 1910, were reasonable, lawful, and necessary, for the transportation of freight to and from the industries located upon, along or near its lines; that some of the shippers and receivers of freight transported over the lines of the Railway were dependent solely upon it for the transportation, forwarding and receipt of goods and merchandise manufactured, used or dealt in by them, having no track connections with any other common carrier; that others of said shippers were so located as to avail themselves of said routes and rates over the Railway as well as over the lines of other carrier or carriers in competition with said Railway; that said concellations, effective March 1, 1910, operated to deprive the shippers located exclusively upon and served by the Railway of the only reasonable or satisfactory through route and through and joint rates available to said industries, and operated as to Your petitioner to deprive it of the benefit of having established and maintained over its line reasonable through routes with through and joint rates applicable thereto, and with reasonable divisions thereof or allowances out of the same, and operated to subject it to undue, unjust and unlawful discrimination, and would cause business to be diverted from it to its said competing carriers; that without such through routes and through and joint rates applicable thereto, the said industries, of shippers along upon and near the lines of said Railway, would be greatly injured in that they and each of them would thereafter be compelled to pay, in addition to the existing tariff rates (i. e., the St. Louis rates), charges for the services performed by the Railway; that said new increase of rates to shippers over the lines of the Railway, caused by the refusal of the trunk lines to continue said through and joint rates, was not only unjust, unreasonable and unlawful, to the great loss and damage of Your petitioner and of the complaining shippers and others similarly situated, but also that the action of the trunk lines in refusing to continue or re-establish said through and joint rates further constituted an unjust and unlawful discrimination as to Your petitioner and between the industries and shippers located upon, along or near the lines of the Manufacturers Railway Company, and other competing industries and shippers located in the City of St. Louis, in that it subjected the complaining shippers and other shippers over the lines of the Railway and subjected the locality in which said lines were located, and the particular descriptions of traffic which moved over said lines, to undue and unreasonable prejudices and disadvantages, and gave undue and unreasonable preferences and advantages to other industries, persons, companies, firms corporations and localities, and to the same kinds

of traffic in other localities in the City of St. Louis, contrary
28 to and in violation of the Act to Regulate Commerce; and that said trunk lines were moved to take said action pursuant to said alleged illegal and unlawful conspiracy in violation of the "Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890.

And the complainants prayed (in part) that an order of the Commission be made commanding the trunk lines and each of them: to establish or re-establish through and joint rates over their lines and the lines of Your petitioner, "as the same existed prior to March 1, 1910"; to cease and desist from longer refusing to establish or re-establish such through and joint rates; that it be determined what should be the proper and reasonable divisions of such rates; that the defendants be required to re-establish and maintain for the period of two years the said through and joint rates "as the same had existed prior to March 1, 1910"; for reparation; and for such other and further order or relief as the Commission might deem necessary in the premises.

18. That to said complaint the trunk lines, defendants therein, filed answers in varying forms, some of which denied generally the averments of the complaint, and others alleged that the Railway was not a common carrier, entitled under the Act to through and joint rates with divisions thereof or allowances therefrom, but was merely a plant facility or tap line; that the cancelled tariffs merely provided for the absorption of switching allowances the legality of which the defendants either denied, doubted or submitted for decision; and that the service performed by the Railway was merely a switching service and not a transportation service.

29 19. That upon the issues thus joined, evidence was taken at hearings before an Examiner of the Commission, and thereafter the case was set down for hearing before the Commission, and was submitted on December 1, 1910, on briefs and oral arguments on behalf of complainants and defendants. That the record thus submitted included substantially all the facts herein above alleged.

20. That thereafter, on June 21, 1911, the Commission filed its Report (of that date) of its findings and conclusions, but made no order thereon. Said Report is hereinafter for convenience referred to as the "first Report."

That by said first Report, the Commission found and held, in part: that the Terminal Association dominates the principal terminal facilities in St. Louis; that it is owned or controlled by the trunk lines, that it or its proprietary or tenant lines own or control all bridges and ferries giving access to all terminals within and all lines directly entering St. Louis; that no interstate shipment can enter or leave St. Louis except over its lines or those of its proprietary or tenant lines; that the Manufacturers Railway was developed in order to extend terminal facilities to an important industrial section of South St. Louis not theretofore having adequate terminal facilities; that the facilities furnished by the Railway were both reasonable and necessary to the shipping public of South St. Louis;

that it was not only holding itself out to the public as a common carrier, but was engaged as such in rendering to the public a substantial service; and in that connection said: "The right of such a carrier to participate in through routes and joint rates and share in the earnings of such rates with others, is a wholly different
30 question and one clearly within the purview of the statute and under the jurisdiction and control of the Commission, as expressly provided in the Act. The purpose of the Act in this respect must be fulfilled by action appropriate to the end in view and at the same time effective to prevent unjust discrimination in any form, enforcing reasonable requirements and limitations in respect to the establishment of through routes and joint rates and the sharing of the earnings thereunder consistently with all other provisions of the statute in such manner as will result in substantial justice to all parties in interest, and the observance of the standards of the law in the public interests."

"It seems clear that the theory of the law is that these beneficent and just purposes can be accomplished without the assumption on the part of the Commission to outlaw any common carrier by rail at common law as modified by constitutional or statutory authority, and thus put it out of business or deny its use to the public, so long as it is willing to hold itself out as a common carrier and perform its functions as such," and the Commission concluded as follows:

"In view of all the facts, circumstances and conditions bearing upon this question, we have no doubt that the Manufacturers Railway Company is in fact a common carrier at common law, notwithstanding any modification thereof, and therefore within the provisions of the first section of the act to regulate commerce, and that the payment to it of a reasonable and just proportion of the St. Louis rates for the terminal services rendered by it is not unlawful."

The Commission further said "From the inception of the
31 Manufacturers Railway Company, in 1887, to 1910—23 years—the defendant carriers uniformly absorbed these charges. The public on its lines have been in this respect on the same footing as have been the shippers located adjacent to the lines, which now constitute the Terminal Association or its subsidiary and proprietary lines. As long as the lines of the Manufacturers Railway were under lease by the Iron Mountain they were practically a part of the terminal system of the city, operated and controlled by the community of interest of the trunk lines, the Iron Mountain being a party to the terminal agreement. The record does not state what the amount of absorption was, but as the Iron Mountain rendered the service, it received out of the St. Louis rates, whatever allowance was made when the traffic was destined to or from a point not on its own lines."

21. That in respect of the further matters complained of as affecting Your petitioner and shippers over its lines, said first Report further found and held: that through said tariff changes, effective March 1, 1910, the transportation status of the shippers over the lines of the Railway had been completely changed, since they did not thereafter receive the service of the Railway on payment of the

St. Louis rates; that the trunk lines had made no effort to justify such an increase in transportation charges; that if said shippers should be

"Compelled to pay for the service of the Manufacturers Railway in addition to the St. Louis rates, they will be placed at a serious disadvantage in competition with other shippers located on the lines of other terminal facilities where the terminal charges are uniformly absorbed out of the St. Louis rates."

32 22. That upon the complainant's charge that the trunk lines by their acts complained of, had subjected shippers to unreasonable increased rates, and had created unjust discrimination and disadvantage, the Commission in said first Report found, held and concluded:

"On the whole record we are of the opinion and find that the action of defendants in cancelling the said divisions and absorptions, which have been for many years included in the St. Louis rates, has subjected complainants, shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges and to undue discrimination and disadvantage. This has been accomplished by cancelling what were in effect joint rates or charges and leaving in effect what are found to be unjust, unreasonable and discriminatory charges."

23. That the concurring opinion of Mr. Commissioner Lane, which constituted a part of said first Report, contained the following finding:

"The line carriers have combined and established a terminal which included a great body of tracks, stations, warehouses, industrial spurs, and other terminal facilities. These are availed of by the carriers entering the city upon an agreed basis. It is proposed by these lines that this terminal shall be a monopoly and that the rates of freight stated in the tariffs shall include delivery within this terminal. They cancelled the allowance to the Anheuser-Busch road, the plant herein, because they feared that a rival company was being developed."

24. That having thus determined in favor of Your petitioner and of the complaining shippers, all of said questions affect-

33 ing them, the Commission did not determine the further question which affected Your petitioner alone, namely, the divisions or allowances which might reasonably be paid to it out of the St. Louis rates, but reserved for further consideration, that and one other question, saying:

(Report, page 316): "The record before us does not present a sufficient basis for a satisfactory determination of the question as to the reasonable and just division or allowance to the complainant carrier, and the further question as to whether a part of the service performed by it is or is not plant facility service within the principles enunciated in the cases above referred to. Respecting these questions further investigation by the Commission will be made."

25. That thereafter, the Commission set down said cause for further hearing before an examiner, at which Your petitioner and the other complainants, and the defendant, Louisville & Nashville Rail-

road Company, introduced evidence, said defendant seeking thereby to have the Commission reopen, reconsider, and re-decide the matters already decided, as well as the matters above referred to as those which had been reserved for decision. That thereafter the cause was again set for hearing before the Commission, and was heard and submitted on January 18, 1913, upon all of the testimony heretofore taken, and upon briefs filed on behalf of Your petitioner and its co-complainants and of said Louisville & Nashville Railroad Company.

26. That thereafter the Commission made and filed its report, dated June 21, 1913, which is hereinafter referred to as the "second report," but made no order thereon. That by said second

34 report the Commission reconsidered the question whether Your petitioner was "a common carrier" subject to the provisions of the "Act to regulate commerce," and also reconsidered the question whether the cancellation of tariffs by the trunk lines had caused undue preference and discrimination against Your petitioner and the complaining shippers, and in that connection stated its findings of fact, in respect of which Your petitioner avers, that the Commission did not find any substantial fact which was in conflict with its findings evidenced in the first report, but it did change to some extent its conclusions of law applicable to such facts.

27. That in said second report the Commission while holding and concluding (page 105), that the "Railway is a common carrier subject to the act as held in the previous report," further concluded: (Page 105): "That the payments formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered to the trunk lines and were in no sense divisions of joint rates as for services rendered for the shippers served by the railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expense of similar delivery by the railway upon the rails of that carrier are not subjecting the shippers located on and served by the railway to undue prejudice and disadvantage; that therefore the only lawful order the Commission can make is in the establishment of joint

35 rates if the conditions are such as to warrant that action; that under joint rates so prescribed that part of the service performed by the railway would be in the contemplation of the act a service performed for the shipper to be paid for by the shipper and could not be construed by the Commission to be a service rendered for the trunk lines, the expense of which could be required by the Commission's order to be borne by the trunk lines; that the rates of the trunk lines not being shown to be unreasonable in themselves, such joint rates with the railway must therefore necessarily be in excess of the rates of the trunk lines to St. Louis by the amount

of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis."

28. That in respect of the contention of Your petitioner and the complaining shippers that undue discrimination against it and them had resulted, the Commission in said second report held and said (pages 103 and 104):

"The allegation of undue discrimination is based primarily upon the practice of the trunk lines of absorbing the charge of $3 per acre assessed by the Terminal Railroad Association against them for passing over its terminals and of their absorbing each other's switching charges under the reciprocal arrangements existing between them as members of that association. It was to enable them to enter St. Louis and to furnish these reciprocal advantages and to afford a uniform rate to all shippers upon their lines in St. Louis that the trunk lines formed the terminal association, and the relative advantages afforded by these facilities and the relative necessity
to the trunk lines of acquiring them should, we think,
36 be given due consideration in the determination of whether
the trunk lines unduly discriminate against shippers on the railway in refusing to absorb its charge while contemporaneously absorbing the charge of the former. Delivery of freight is made at the St. Louis rate on the rails of the St. Louis Transfer Railway, which as stated is owned by certain of the proprietary lines of the terminal association through the Wiggins Ferry Company, and on the rails of the Iron Mountain, one of the proprietary lines of the terminal association, within two or three blocks of the whole length of the Second street line of the railway, and in addition the rails of the Iron Mountain extend west to and across the northern end of the Second street line of the railway and in a few instances serve even the same industries by direct spur tracks. In addition to these deliveries in this section of St. Louis on what are in fact their own rails, with attendant reciprocal advantages to them, the trunk lines are sought to be required by this Commission's order to go a step further and bear the expense of the delivery on the rails of a separate and independent terminal connection which is not in position to render such reciprocal services and which, by its own statement, is endeavoring to construct an extensive terminal system to rival the trunk lines' own facilities as represented in the terminal association."

And on page 105: "In this connection it may be argued by complainant that the Terminal Association is a separate corporation from the trunk lines. This is true. But it is also true that intermingled with the lines controlled by it as a separate corporation are included in the same reciprocal arrangement certain terminal lines owned or controlled by its proprietary or tenant lines direct, as is the Wiggins Ferry Company, as well as the various terminal properties of the individual trunk lines themselves, all of which
37 together constitute the united terminals of all the trunk lines
entering the city. There is therefore here presented a different situation from that which would be presented if we had under consideration two or more independent terminal systems in St.

Louis, and the trunk lines absorbing the charge of one or some of them and refusing contemporaneously to absorb the charge of the others under like conditions."

And on page 110: "We have found that there is no undue discrimination against shippers located on or served by the railway chargeable to the trunk lines by reason of their cancellation of these allowances, and that in the absence of such undue discrimination the Commission can make no order in reference thereto."

Your petitioner respectfully avers that (as appears from the foregoing conclusions), while the Commission (as a matter of law), dealt with Your petitioner as a competitor not only of the Terminal Association, but through its competition with the Terminal Association as a competitor of the trunk lines themselves, the Commission declined (as a matter of law), to consider or treat the Terminal Association, or any of its operating subsidiaries, or any of the trunk lines or their subsidiaries or tenant lines, having terminals of their own within the City of St. Louis, as independent terminal carriers rendering terminal services in St. Louis, and thus, through a conclusion of law which Your petitioner respectfully avers was erroneous, the Commission by so treating the Terminal Association and its subsidiaries, and the trunk lines and their subsidiaries, having terminals in St. Louis, as an integral part of all the trunk lines, instead of as separate and independently operating terminal carriers in competition with Your petitioner, erroneously

38 held that by cancelling the St. Louis rates as to points on its lines, while at the same time leaving them effective in the same zone as to all other points in St. Louis, and by refusing to longer pay to Your petitioner a reasonable sum out of said St. Louis rates for its services while continuing to make such payment to other carriers performing for said trunk lines a like service within said zone as those performed by Your petitioner, there was not an unjust or unlawful discrimination as to the complaining shippers.

29. That concerning the complaint that the action of the defendants had been pursuant to their purpose to prevent a rival terminal company from developing or existing, and that such purpose was pursuant to the unlawful conspiracy and monopoly, above referred to, the Commission concluded and held (page 110):

That it was "unnecessary and inappropriate to discuss the question whether the Terminal Railroad Association of St. Louis is a monopoly in violation of the Sherman Anti-trust law, as the determination of that question is quite apart from this proceeding and is not controlling of the issues before this Commission";

And (page 109): "It is unnecessary in this proceeding to discuss in detail the Terminal Railroad Association of St. Louis or, otherwise than to state it, to indulge in comment upon complainants' contention that the trunk lines of St. Louis, instead of the owners of the railway, and its shippers for whom its services are rendered, should be compelled to develop this carrier into a formidable independent terminal system to rival their own."

30. And Your petitioner avers that in and by its said

39 second report, the Commission declined to compel the trunk lines serving St. Louis and connecting with the lines of Your

petitioner to either pay it a reasonable sum for its terminal services out of the St. Louis rates or to cease and desist from paying other carriers within such switching limits out of said rates for similar services and denied the right of shippers over the lines of the Railway to make and receive their shipments at the St. Louis rates, while at the same time conceding the right of competing shippers, located upon the terminals of the trunk lines or of the Terminal Association or its, their or *its* subsidiaries, to make and receive their shipments at the St. Louis rates, and that the Honorable Commission so held, because it erroneously concluded as a matter of law, that the terminal facilities, offered by the Terminal Association and its operating subsidiaries, were to be treated and considered as extensions of the facilities of the trunk lines, and not as the facilities of independent terminal carriers, operating within the City of St. Louis.

31. That about the time of or after the first Report of the Commission, the same or all of the trunk lines again agreed with Your petitioner upon through and joint rates with divisions, allowances and practices affecting interstate traffic moving over its lines pursuant to which it again received a division or allowance, out of the St. Louis rates, for its services, and the shippers over the Railway again for a time made and received their shipments at the St. Louis rates, i. e., until said second Report was made.

That upon and after said second Report, the trunk lines or some of them, thereupon refused and still refuse to enter into and establish through and joint rates with Your petitioner, paying it reasonable divisions or allowances out of such St. Louis rates and refuse to extend said St. Louis rates to points on Your petitioner's railway, although the trunk lines then made, have since then made, and still make, the St. Louis rates effective as to shipments moving from or to points in St. Louis on the lines of the Terminal Association and of its proprietary and subsidiary lines, and pay out of the same for the charges made by carriers performing like terminal services as those performed by Your petitioner, and also thereby compel the shippers on Your petitioner's line to pay the charges of the Manufacturers Railway in addition to the St. Louis rates, while their competitors on other terminal lines in St. Louis make their shipments at the St. Louis rates.

32. That upon the filing of said second Report of the Commission the complaining shippers and Railway filed with the Commission their several applications for rehearing, which were granted.

That pursuant thereto, said cause was for the third time set down for hearing before the Commission, upon briefs and oral arguments, on November 13, 1913, and thereafter, on to-wit, November 5, 1914, the Commission filed its Report dated July 10, 1914, which is herein referred to as the "Third Report," and at the same time made its orders which are herein complained of and hereinafter set out.

33. That by said third Report the Commission confirmed its findings and conclusions in its second Report, "as interpreted" in its

third Report, and among other things, thus made its final
41 findings and conclusions to the effect:

(*a*) That the Manufacturers Railway is a common carrier subject to the provisions of the "Act to Regulate Commerce."

(*b*) That although the trunk lines, at the time they cancelled the tariffs and allowances to the Railway were absorbing the terminal charges of the Terminal, and did not discontinue the latter absorptions when they cancelled the allowances to the Railway, they did not thereby subject the Railway or complaining shippers to undue prejudice or disadvantage.

(*c*) That the amounts formerly paid by the line carriers to the Railway (page 102), "were voluntary allowances and could not be considered to be divisions of joint rates which the Commission could by affirmative order establish."

(*d*) "That the separate rates of the trunk lines and of the complainant railway," being by the Commission assumed "to be prima facie reasonable, any joint rates which" the Commission "could by affirmative order require the carriers in the through route to establish would necessarily be higher than the rates of the trunk lines to and from St. Louis by the amount of that part of the through charge which would accrue to the complainant Railway."

(*e*) That while the Commission did not have the power to require the trunk lines to participate with the Railway in the St. Louis rate, the trunk lines might voluntarily do so, provided the division going to the Railway was not so excessive as to amount to a rebate or to give to its owners an undue preference.

42 (*f*) That if the trunk lines did not elect voluntarily to divide the St. Louis rate with the Railway, then they might put into effect rates by which shippers would have to pay, in addition to the St. Louis rates, the charges of the Railway.

(*g*) That the said conclusions of the Commission were not in conflict with the decree or decision of the Supreme Court of the United States in the case of United States v. Terminal Railroad Association 224 U. S. 383.

34. That thereupon, at the same time, the Commission made its order (into which it embodied its said first, second, and third Reports), said order reading as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on June 21, 1911, made and filed a report containing its findings of fact and conclusions thereon; and having, on June 21, 1913, made and filed a supplemental report containing its further findings of fact and conclusions thereon; and having on the date hereof made and filed its report upon reargument; which said reports are hereby referred to and made a part hereof:

It Is Ordered, That the above-named defendants and the Manufacturers Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required, on or before January 1, 1915, to cease and desist from charging, demanding, collecting, or receiving their present rates on traffic moving

in through transportation between points on the line of said
43 Manufacturers Railway Company and points on the lines of defendants in states other than Missouri, to the extent that said rates exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and the same points in states other than Missouri, by more than $2.50 per car.

It is Further Ordered, That the above-named defendants and the Manufacturers Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required to establish and put in force, on or before January 1, 1915, and to maintain in force thereafter for a period of not less than two years, and apply to said traffic, rates which shall not exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and points in states other than Missouri, by more than $2.50 per car."

That on December 7, 1914, the Commission modified above order by inserting in the last paragraph thereof, immediately after the words "on or before January 1, 1915," the words "upon notice to the Interstate Commerce Commission and the general public by not less than three days' filing and posting in the manner prescribed in Section 6 of the Act to Regulate Commerce."

35. Your petitioner further respectfully shows: That to the extent that the findings and conclusions of the Commission which are herein complained of, involved questions of fact, there was no substantial evidence to support such findings and conclusions, and all the facts relevant thereto were substantially undisputed upon the record and evidence before the Commission, so that said conclusions, and the said order based thereon, involved mere questions of
44 law, as to which Your petitioner respectfully shows that the Honorable Commission erred in making its findings and conclusions, and in making and issuing said order, all of which were either based on mistakes of law, or without any substantial evidence to support them, or contrary to the undisputed evidence, or beyond the constitutional or statutory powers of the Commission; and that said order and certain of the findings and conclusions constituting part thereof, and upon which said order was made and rests, were and are unlawful, in violation and denial of the rights of Your petitioner under the Constitution and laws of the United States, to the extent, in the respects, and for the reasons as follows:

I. The order is void to the extent, and in that, it permits or requires the trunk lines to charge, collect or receive rates in excess of the St. Louis rates, on interstate traffic moving to or from points on the line of Your petitioner, while at the same time keeping in effect the St. Louis rates as to traffic moving to or from points within the switching limits of St. Louis on the lines of the Terminal Association or its subsidiary or proprietary lines performing terminal services in St. Louis, and permits said trunk lines to pay out of said rates to lines doing a like terminal service as that of Your petitioner, while refusing to require them to do so for like service rendered by Your petitioner; among other reasons because:

(*a*) The facts found by the Commission, and the facts disclosed by the undisputed evidence in the record before the Commission,

required the conclusion as a matter of law, that the change in rates by which the trunk lines required the complaining shippers
45 to pay the charges of the Railway in addition to the St. Louis rates, while at the same time keeping in effect the St. Louis rates applicable to traffic moving to or from points on the lines of the Terminal or its subsidiary or proprietary carriers performing terminal services in St. Louis, created an undue, unjust and unlawful preference and discrimination against Your petitioner as a common carrier participating in the service of transportation, and against the shippers using the lines of the Railway.

(*b*) To hold and order, as the Commission did, contrary to the law applicable to the uncontroverted facts, and without substantial evidence to support such conclusions, was so arbitrary as to amount to the exercise of power not given to the Commission by law.

(*c*)To so hold and order was confiscatory in that Your petitioner will thereby be deprived of its property without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

II. Said order is void to the extent above indicated, because it is in contravention of the decree of this Honorable Court and of the Supreme Court of the United States in the case of United States v. Terminal Railroad Association, 224 U. S. 383, in that:

(*a*) The Commission in its third report concluded: that said decree and the decision in said cause were "not controlling of the issues before the Commission"; that the Terminal Association as a terminal carrier was not to be considered or treated as an institution independent of its proprietary lines but as a part of the facilities of such lines themselves; and that consequently the record
46 before the Commission did not "present the case of two or more independent terminal systems in St. Louis, with the trunk lines absorbing the charge of one or more of them, and refusing contemporaneously to absorb the charge of the others under like conditions."

(*b*) Said conclusions last above set out, and said order, were not only made without substantial evidence to support them and contrary to the undisputed record evidence then before the Commission, and contrary to the facts found by the Commission, but were contrary to said decree, which in effect required that the terminal field in St. Louis be kept open to any competitive terminal systems, and that the Terminal Association itself should be considered and treated as a terminal carrier operating independently of its proprietary trunk lines; each of which requirements of said decree was disregarded and contravened by the said conclusions and order of the Commission.

(*c*) That said conclusions and order of the Commission were in derogation of said decree in holding that the facilities of the Terminal Association were to be treated as a part of the trunk lines' own facilities, thus discriminating against the shipping public of South St. Louis, and against Your petitioner as a common carrier, by refusing to require the trunk lines to absorb the charges of Your petitioner, while at the same time permitting them to continue

hereafter to absorb all the terminal charges of the Terminal Association and of its subsidiary and proprietary lines for like services rendered by them to shippers located upon their lines within the City of St. Louis; that by such discrimination, said conclusions and order tend to strengthen the very monopoly which the said
47 decree of this Honorable Court and of the Supreme Court condemned, by enabling said monopoly to further effectuate its unlawful purposes to the injury of Your petitioner and its shippers.

III. Said order is void to the extent that it permits or requires the trunk lines to charge, collect or receive rates in excess of the St. Louis rates on interstate traffic moving to or from points on the lines of the Manufacturers Railway because:

(*a*) The complaint before the Commission alleged in substance that the joint routes and rates evidenced by the tariffs cancelled as of March 1, 1910, were reasonable; that the cancellation of them and the refusal of the trunk lines to continue the rates evidenced by them, produced a result which was unreasonable, unjust and unlawful, to the great loss and damage of Your petitioner and its shippers; and that thereby the shippers would be compelled to pay in addition to the St. Louis rate the charges of the Manufacturers Railway Company.

That in substance said complaint had shown that the trunk lines had increased and proposed to increase the freight rates by establishing new and increased rates covering interstate shipments as to all shippers located on or using the lines of the Railway.

(*b*) Section 15 of the "Act to Regulate Commerce" imposed on the trunk lines the burden of proving that such a proposed increase in rates was just and reasonable; and said proposed increases were by said complaint attacked by Your petitioner and its said shippers as unjust and unreasonable.

That the Commission, as shown by said report, instead of
48 requiring the trunk lines to assume said burden, and to prove the reasonableness of said proposed increase of rates, erroneously assumed their reasonableness without any substantial evidence to support any such assumption or conclusion, and thereby said order permits the carriers to keep and hereafter make effective an increase of rates applicable to shippers over the lines of the Manufacturers Railway Company, contrary to the provisions of the Act to Regulate Commerce and in excess of the powers of the Commission, and to the injury and prejudice of Your petitioner.

IV. The said order is void to the extent above indicated, because the Honorable Commission erred as a matter of law in concluding, upon the pleadings and the facts found by it and the undisputed evidence before it, that it had no power to order the establishment of joint rates as the maximum to be charged, and to prescribe the divisions thereof, or allowances or practices to be observed in respect thereto.

V. The said order is void to the extent above indicated, because the Commission held as a matter of law, that it had no power under

any circumstances to award reparation to a common carrier for violations by other carriers of its rights under the Act, and therefore denied such relief as prayed by Your petitioner.

36. Your petitioner further shows, upon information and belief, that the said unlawful conspiracy entered into against the Railway and against the shippers using its lines, still continues, and that pursuant to such conspiracy, a concerted effort is being made to cause all of the trunk lines to refuse, some of the trunk lines will refuse, and some have already refused, since the making of said

49 order, voluntarily to make the St. Louis rates applicable to interstate traffic over the lines of Your petitioner, all of which is and will be violative of the rights of Your petitioner as a common carrier, and of the rights of its shippers.

37. That as to the tariffs and rates made or to be made by any of the trunk lines who may now or hereafter refuse such voluntary action, all shippers over the lines of Your petitioner will be required to pay the charges of Your petitioner in addition to the St. Louis rates, while at the same time their competitors in business, located in the City of St. Louis upon the lines of the Terminal Association or its subsidiary lines, or of the trunk lines or their subsidiary lines, will be permitted to make and receive their shipments at the St. Louis rates, all to the great prejudice and injury of Your petitioner and its property.

38. That many of the shippers who use the lines of Your petitioner are large receivers of freight sold and shipped to them by persons located in other states and territories of the United States, and in foreign nations, upon which shipments the freight charges are paid by such last described shippers; that in dealing with such sellers said St. Louis shippers are and will be subjected to serious and irreparable loss and undue and unjust disadvantage, as compared with their competitors in St. Louis located on the lines of the Terminal or of the proprietary or subsidiary lines.

That the burden of additional freight rates to South St. Louis, in the district wherein the lines and facilities of Your petitioner are located, and the said unjust discriminations, have already injuriously affected and irreparably injured, and will continue

50 to so prejudice and injure the value of Your petitioner's property as a whole, and its earning power, and its desirability as a common carrier competing with said other terminal carriers, and to prejudice the desirability of industries located on its lines as shipping points, and the desirability of such industries for the purposes for which they have heretofore been and are now being used; that not only Your petitioner but said entire locality has suffered and will continue to suffer irreparable injury, and said locality will suffer retarded growth and development as a manufacturing and commercial locality, if said order should stand and the trunk lines should be permitted to refuse to apply the St. Louis rates to shipments over the Railway; and if said order is permitted to stand as made, and is not enjoined as herein prayed, Your petitioner will, as above shown, suffer irreparable damage and injury, not capable of being definitely ascertained, nor capable of adequate relief in any proceeding other than this.

39. And Your petitioner further shows that unless a preliminary restraining order, and an interlocutory injunction, be granted it herein, restraining the enforcement of said order to the extent herein prayed, pending this proceeding, said order will be carried out in new tariffs effective January 1, 1915, under which Your petitioner will, for the reasons and in the manner above stated, suffer irreparable damage and injury during the pendency of this proceeding.

Wherefore Your petitioner prays: that said order be declared void, and annulled, and that the enforcement thereof be enjoined, to the extent that said order requires or permits the trunk lines, or any other common carriers interchanging interstate freight
51 traffic with the Railway, to make or keep effective any freight rates, applicable to interstate traffic moving to or from points on the lines of the Railway, in excess of the St. Louis rates, so long as such carriers continue to apply the St. Louis rates to interstate shipments to or from points within the City of St. Louis located on the lines of the Terminal Association or any of its subsidiary lines, or on the lines of any of the trunk lines or their subsidiary or tenant lines, which perform terminal transportation services in the City of St. Louis; that said order be declared void and annulled, and that the enforcement thereof be further enjoined, to the extent that it permits the trunk lines, or any other carriers, interchanging interstate freight traffic with the Railway, to longer refuse to establish and make through routes with the Railway, applicable to interstate shipments to or from points on the lines of the Railway, with such rates applicable thereto, and with such divisions of or allowances out of the rates applicable thereto, and with such absorptions or practices or regulations in respect thereto, as will require the trunk lines to pay to Your petitioner, out of the St. Louis rates, reasonable compensation for its transportation service, and as will enable shippers using the Railway to make and receive their shipments at the St. Louis rates; that said order be set aside insofar as it, in effect and as interpreted by said Reports which constitute a part of it, holds that the Commission is not empowered under the law to award reparation to a common carrier; that the injunctive relief hereinabove prayed be made effective by a preliminary restraining order pending the application for an interlocutory injunction, and by an interlocutory injunction pending the final hearing, and by a perpetual injunction thereafter; and Your peti-
52 tioner further prays for such other and further relief as to Your Honors may seem meet in the premises.

And Your petitioner further prays, that such writs, orders, and processes of this Honorable Court, as may be appropriate to the subject matter of this petition, and to the relief herein prayed, be duly issued and ordered served.

MANUFACTURERS' RY. CO.,
Petitioner,
By G. F. MOORE, *President.*

SIDNEY F. ANDREWS,
Of Counsel.

53 UNITED STATES OF AMERICA,
In the Eastern District of Missouri:

STATE OF MISSOURI,
City of St. Louis, ss:

On this 14th day of December, 1914, before me personally appeared G. F. Moore, who being by me duly sworn, deposes and says, on behalf of the above named petitioner, that he has read the foregoing petition and knows the contents thereof, and that the facts therein alleged are true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes said petition to be true.

G. F. MOORE.

Subscribed and sworn to before me this 14th day of December, 1914. My commission expires April 19th, 1918.

(SEAL.) ESTHER WILSON,
Notary Public.

54 And afterwards, to-wit on the 18th day of January, 1915, by leave of Court first had and obtained, there was filed in said cause, Petition of Intervention on behalf of Anheuser-Busch Brewing Association, et al., which said petition of intervention is in words and figures as follows, to-wit:

(Petition of Intervention.)

55 In the District Court of the United States, for the Eastern Division of the Eastern District of Missouri.

No. 4385.

MANUFACTURERS RAILWAY COMPANY, Petitioner,
vs.
THE UNITED STATES OF AMERICA, Defendant.

Petition of Intervention on Behalf of Shippers Using the Lines of the Manufacturers Railway.

Nagel & Kirby, Counsel for said Intervenors.

56 In the District Court of the United States, for the Eastern Division of the Eastern District of Missouri.

No. 4385.

MANUFACTURERS RAILWAY COMPANY, Petitioner,
vs.
THE UNITED STATES OF AMERICA, Defendant.

Petion of Intervention on Behalf of Anheuser-Busch Brewing Association and Other Shippers Using the Lines of the Manufacturers Railroad Company.

To the Judges of the District Court of the United States within and for the Eastern Division of the Eastern District of Missouri:

Your petitioners, Anheuser-Busch Brewing Association, a corporation; Louis Obert Brewing Company, a corporation; St. Louis Brewing Association, a corporation; The Independent Breweries Company, a corporation; Otto F. Stifel's Union Brewing Company, a corporation; Griesedieck Brothers' Brewery Company, a corporation; Ganahl
57 Lumber Company (formerly Fidel-Ganahl Lumber Company), a corporation; St. Louis Lumber Company, a corporation; St. Louis Cooperage Company, a corporation; Stecher Cooperage Works, a corporation; Western Foundry and Sash Weight Company, a corporation; Independent Lumber Company, a corporation; Henry Quelmalz Lumber and Manufacturing Company, a corporation; B. Klauber's Sons' Junk Company, a corporation; A. Klauber's Sons' Iron and Metal Company, a corporation; Standard Furniture Manufacturing Company, a corporation; G. Cramer Dry Plate Company, a corporation; Hammer Dry Plate Company, a corporation; John Nooter Boiler Works Company, a corporation; J. H. Belz Provision Company, a corporation; St. Louis Basket and Box Company, a corporation; and Christopher and Simpson Iron Works Company,

a corporation,—respectfully praying leave to intervene in the above entitled cause as co-petitioners therein with the Manufacturers Railway Company, and to be represented therein by their counsel, respectfully represent and show:

1. That in said cause the Manufacturers Railway Company seeks to set aside in part, and to enjoin in part, the enforcement of an order made by the Interstate Commerce Commission (hereinafter for brevity referred to as the "Commission"), on or about November 5, 1914, under date of July 10, 1914, in a cause before the Commission, numbered 3151, wherein Manufacturers Railway Company and certain of the shippers using its lines were complainants, and various common-carrier corporations named in this cause as the "trunk lines," were defendants. That the matters complained of in said proceeding before the Commission arose in the City of St. Louis, State of Missouri.

58 2. That each of Your petitioners is a "Manufacturing and Business" corporation, organized, under the laws of the State of Missouri, and a citizen of said State, having its plant or place of business located in that part of the City of St. Louis known as "South St. Louis," and in, upon, or conveniently accessible to, the lines of railway of the Manufacturers Railway Company (hereinafter for convenience referred to as the "Railway."

That some of Your petitioners, to-wit: Anheuser-Busch Brewing Association, The Independent Breweries Company, Stecher Cooperage Works, St. Louis Basket and Box Company, Ganahl Lumber Company, and Western Foundry and Sash Weight Company were among the co-complainants with the Railway, in the said proceeding before the Commission, which constitutes the subject-matter of the above entitled case, and said petitioners were and are "parties in interest" to said "proceeding before the Commission," and therefore entitled under the provisions of Sections 212 and 213 of the "Judicial Code" (Act of Congress of March 3, 1911), to be made parties to the above entitled cause "of their own motion and as of right, and to be represented by their counsel."

3. That the others of Your petitioners, being shippers over and users of the lines of the Railway, were and are also directly interested in said controversy before the Commission, and in the subject-matter of the above entitled suit, in like manner as said petitioners last above named, and therefore may be permitted to intervene therein, pursuant to the provisions of said Section 212 of the "Judicial Code."

4. That Your petitioners in fact represent other and additional shippers not named, but who are similarly situated and in-

59 terested, Your petitioners thus constituting or representing more than fifty persons, firms and corporations using the lines of the Railway as shippers of freight moving in interstate commerce, who have authorized this petition to be filed in their behalf, each of said persons, firms and corporations, as such shippers, being interested in the above entitled suit, and being interested in and affected by the said controversy before the Commission to which said suit relates, and in and by the order of the Commission which is referred to therein.

5. That Your petitioners make this application and intervene, for the benefit also of all such other persons, firms and corporations located or engaged in business along, upon, or near the lines of railway of the Manufacturers Railway Company, who as shippers, are dependent upon, or may conveniently use said lines of railway, for the transportation of freight moving in interstate commerce and shipped or received by them. That the said class of persons, firms, and corporations herein referred to as shippers is so numerous as to make it impracticable to bring all of them before the Court.

6. That Your petitioners and all other shippers using the lines of the Manufacturers Railway Company are directly interested in, and prejudicially affected by, the said order of the Commission which is sought to be enjoined in the above entitled cause. That some of Your petitioners have plants or places of business located upon and along the lines of the Railway, which, as shipping points, are dependent solely upon the lines of the Railway for the transportation, forwarding and receipt of goods and merchandise manufactured, used or dealt in by them, their said plants or places of business having
60 no track connection with or convenient access to any common carrier other than the Railway; that others of Your petitioners, and other shippers have industries in South St. Louis so located as to be served not only by the lines of the Railway, but also in competition therewith, by the lines of other common carriers named in the petition of the Manufacturers Railway Company in the above entitled cause, as carriers which perform transportation services within the switching limits of St. Louis.

7. That within the switching limits of St. Louis there were at all times herein referred to, and still are, a number of different industrial and shipping localities conveniently accessible to the facilities of various common carriers of freight, within which localities, and in part because of such accessibility, large numbers of manufacturing and business establishments and plants, representing many varied kinds of industries, have located and developed. That one of said industrial and shipping localities is that known as "South St. Louis," in which the industries of Your petitioners, and the lines of the Railway, are located. That said industrial locality, "South St. Louis," was and is served, in respect of terminal transportation services, by three competing common carriers rendering such services in connection with line carriers performing the line haul, viz: by the Railway, the St. Louis, Iron Mountain & Southern Railway Company, and to a slight extent also by the St. Louis Transfer Railway, a subsidiary of the Terminal Association. That each of the other industrial and shipping localities within the switching limits of St. Louis was and is served, in respect of terminal transportation services, by the facilities of the Terminal Association or some of its independent operating subsidiaries,
61 or by the terminal facilities of one or more of the trunk lines (or their subsidiary or leased lines), some of which have such facilities within the City of St. Louis. That in each of said other industrial and shipping localities were and are located the industries, plants and shipping houses of many

persons, firms and corporations, who compete in their respective lines of business with certain of the shippers located in said locality, "South St. Louis." That because of such competition as between localities, any advantages by way of differences in rates, practices, regulations or services, accorded by the carriers to shippers located in one or more of said localities, but denied to competing shippers located in any other of said localities, causes unjust and undue discrimination, prejudice and disadvantage to the latter locality, to the commodities shipped to or from it, and to the shippers located therein.

8. That each of Your petitioners does business and makes and receives shipments of freight moving in interstate commerce in said locality, "South St. Louis," and in competition with various persons, firms and corporations, whose industries or places of business are located in South St. Louis or in other industrial and shipping localities in St. Louis, and upon, along, or conveniently accessible to the lines of either the Terminal Railroad Association of St. Louis (hereinafter for convenience referred to as the "Terminal Association"), or the "St. Louis Transfer Railway Company," an operating subsidiary of the Terminal Association, or some other operating subsidiary of the Terminal Association, or some of the trunk lines which have or operate terminal facilities in St. Louis, or some of the subsidiary or leased lines of some of the trunk lines,
62 being the various common carriers which perform terminal transportation services within the freight or rate "zone" known as the "switching limits of St. Louis," and which render such services in connection with line-haul transportation services rendered by other common carriers.

9. That for many years prior to March 1, 1910, it was the universal custom of all carriers making deliveries or receiving shipments, within the switching limits of St. Louis, to apply the St. Louis rates to all team track, public delivery yards, public switches, and private yard, industrial, and plant switches, without making any charge in addition to the St. Louis rates for the terminal services (including the "spotting of cars") which constituted a part of the transportation of said freight moving in interstate commerce to or from such points of destination or origin, as shipping points; that until March 1, 1910, the practice aforesaid was applied by the trunk lines and all other carriers to such points of origin and destination on the lines of the Railway, as well as to those located upon the lines of other terminal carriers within the switching limits of St. Louis. That by said practice there was created, established and maintained by the common carriers operating within the city of St. Louis, and by the trunk lines interchanging freight with them, a rate "blanket" or "zone" consisting of the territory included within the switching limits of St. Louis, and including all the shipping stations, team tracks, public delivery yards, public switches, and private yard, industrial, and plant switches, located on or connected with the lines of the Railway, within which "rate zone" all shippers

using such tracks were permitted to and did make and re-
63 ceive their shipments at the St. Louis rates, without having to pay, in addition thereto, any charge for the said terminal service which constituted a part of the transportation.

10. That during the period prior to March 1, 1910, while the trunk lines thus applied to all shipping points on the lines of the Railway the same practice which they then applied to other shipping points in St. Louis, viz., of making the St. Louis rates applicable to such points without any added charge for the service of the carrier rendering terminal transportation services in the City of St. Louis, some of Your petitioners, relying upon said practice, and upon their expectation of its continuance, were induced to and did build or enlarge their plants located upon the lines of the Railway, for the purpose of availing themselves of the benefit of said practice, the effect of which was to put them on a like basis, as to freight rates, with their competitors in other parts of St. Louis. That in such manner, Your petitioner, "John Nooter Boiler Works Company," was induced to and did locate and build its manufacturing plant upon the lines of the Railway, and Your petitioners, "St. Louis Basket and Box Company" and "Ganahl Lumber Company," did each construct substantial extensions to their plants located upon the lines of the Railway.

11. That by tariffs and notices effective March 1, 1910, the trunk lines cancelled the said rates, practices, and regulations, which had been in effect until that date, and pursuant to which Your petitioners and all other shippers using the lines of the Railway had for a long time made and received their shipments of freight at the St. Louis rates, and established new rates, practices, and regulations, as a re-
64 sult of which the trunk lines, after March 1, 1910, increased the rates applicable to points on the lines of the Railway, by requiring all shippers using said lines to pay the charges of the Railway in addition to the St. Louis rates, and thereby subjected said shippers to unreasonable new rates, but also, and at the same time, continued to apply the St. Louis rates to all the other said industrial localities in St. Louis and to their respective shipping points and shippers, without any additional charge for terminal services, under like conditions, thus subjecting the locality, South St. Louis, and its industries and commodities and its shippers using the lines of the Railway, including Your petitioners, to the unjust, undue, and unlawful disadvantage and prejudice, of having to pay higher freight rates than their competitors located in such other localities upon the lines of other carriers; and they also in like manner continued to apply the St. Louis rates to all shippers in South St. Louis who used the terminal services of the St. Louis Iron Mountain & Southern Railway, or of the St. Louis Transfer Railway (Terminal Association), while at the same time, and under like conditions, refusing to apply the St. Louis rates to all shippers in South St. Louis, who used the terminal services of the Railway, thus creating unjust, undue, and unlawful discrimination against the latter class of shippers and in favor of their competitors in the same industrial locality.

12. That Your petitioners hereby adopt and, by reference thereto, import into this intervening petition, all the averments of the petition of the Railway herein, in manner and form as therein set out.

13. That said cancellations effective March 1, 1910, and the new rates, practices, and regulations, established thereby, were
65 unreasonable, unjust, unlawful, and unduly discriminatory and prejudicial and were in violation of the "Act to Regulate Commerce," approved February 4, 1887, and the Acts amendatory thereof and supplementary thereto, and were violations of the "Sherman Anti-trust Act," approved July 2, 1890, and the acts amendatory thereof, and operated to the irreparable damage and injury of Your petitioners and of all other shippers using the lines of the Railway, in that:

(*a*) They caused to be effective on and after March 1, 1910, new rates applicable to Your petitioners' interstate shipments over the lines of the Railway, which were higher than had theretofore been in effect, and thereby unreasonably increased the rates applicable to Your petitioners' said shipments.

(*b*) They subjected Your petitioners and other shippers similarly situated, and the locality South St. Louis, to new rates, practices, and regulations, which created unreasonable, unjust, and unlawful discrimination, disadvantage, and prejudice, in that: they required all shippers using the lines of the Railway to pay the charges of the Railway in addition to the St. Louis rates, contrary to the customs hereinbefore alleged, while at the same time and under like conditions, the trunk lines continued to apply the St. Louis rates, without any such additional charge, to all shippers in the same rate zone who were located in other industrial localities therein, and also to all shippers in the same locality (South St. Louis), who used the lines of any and every other terminal carrier than the Railway, whereby the business competitors of Your petitioners, and of all other shippers using the lines of the Railway, who used the terminal services of any other terminal carrier than the Rail-
66 way, made and received their competing shipments at lower rates and thus received an unreasonable, undue and unjust preference and advantage; they subjected the locality South St. Louis to like prejudices, disadvantages, and discrimination, as compared with other localities within the same rate zone; and they subjected the commodities shipped and received by Your petitioners to like prejudices, disadvantage, and discrimination.

(*c*) They denied to Your petitioners and other shippers similarly situated the right accorded them by law, to the establishment and maintenance of through routes with reasonable through and joint rates applicable to their shipments made and received at points upon the lines of the Railway.

(*d*) They deprived Your petitioners (and other shippers similarly situated) of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

14. That consequent upon said cancellations, proceedings were had before the Commission, and the reports and order herein com-

plained of were made by the Commission, all as alleged in said petition of the Railway herein.

15. That said order of the Commission, and the Reports constituting part of it and upon which it was based, were and are unlawful, in violation and denial of the rights of Your petitioners (and of all other shippers similarly situated), under the Constitution and laws of the United States, to the extent and in the respects hereinafter set out. That to the extent that the findings and conclusions of the Commission which are herein complained of, involved questions of fact, there was no substantial evidence to support
67 such findings and conclusions, but all of the facts relevant thereto were substantially undisputed upon the record before the Commission, so that said findings and conclusions, and said order based thereon, involved mere questions of law, as to which the Honorable Commission erred in making its said findings and conclusions and in making and issuing said orders, all of which were either based on mistakes of law, or without any substantial evidence to support them, or contrary to the undisputed evidence, or beyond the constitutional or statutory powers of the Commission,—all to the extent, in the respects, and for the reasons as follows:

I. The order is void to the extent and in that, it permits or requires the trunk lines to charge, collect, or receive, rates in excess of the St. Louis rates, on interstate traffic moving to or from points on the lines of the Railway, while at the same time keeping in effect the St. Louis rates as to traffic moving to or from points within the switching limits of St. Louis on the lines of the Terminal Association, or of its subsidiary or proprietary lines performing terminal services in St. Louis, and permits said trunk lines to absorb the charges of other terminal carriers doing a like terminal service as that of the Railway, while refusing to require them to absorb the charges for like services rendered by the Railway under similar conditions; and that the order is so void among other reasons because

(*a*) The facts found by the Commission, and the facts disclosed by the undisputed evidence in the record before the Commission, required the conclusion as a matter of law, that the change in rates by which the trunk lines required the complaining and other shippers to pay the charges of the Railway in addition to the St.
68 Louis rates, while at the same time keeping in effect the St. Louis rates applicable to traffic moving to or from points on the lines of the Terminal Association or of its subsidiary or proprietary carriers performing terminal services in St. Louis, created an undue, unjust and unlawful preference and discrimination against Your petitioners and against all other shippers using the lines of the Railway.

(*b*) To hold and order, as the Commission did, contrary to the law applicable to the uncontroverted facts, and without substantial evidence to support such conclusions, and contrary to the facts found by the Commission, was so arbitrary as to amount to the exercise of power not given to the Commission by law.

(*c*) To so hold and order, was confiscatory, in that these inter-

renors and all other shippers using the lines of the Railway will thereby be deprived of their property without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

II. Said order is void to the extent above indicated, because it is in contravention of the decree of this Honorable Court, and of the Supreme Court of the United States, in the case of United States v. Terminal Railroad Association, 224 U. S. 383, in that:

(*a*) The Commission in its third report concluded: that said decree and the decision in said cause were "not controlling the issues before the Commission"; that the Terminal Association as a terminal carrier was not to be considered or treated as an institution independent of its proprietary lines, but as a part of the facilities of such lines themselves; and that consequently the record before the Commission did not "present the case of two or more
69 independent terminal systems in St. Louis, with the trunk lines absorbing the charge of one or more of them, and refusing contemporaneously to absorb the charge of the others under like conditions."

(*b*) Said conclusions last above set out, and said order based upon them, were not only made without substantial evidence to support them, and contrary to the undisputed record evidence then before the Commission, and contrary to the facts found by the Commission, but were contrary to said decree, which in effect required that the terminal field in St. Louis be kept open to any competitive terminal systems, and that the Terminal Association itself should be considered and treated as a terminal carrier operating independently of its proprietary trunk lines; each of which requirements of said decree was disregarded and contravened by the said conclusion and order of the Commission.

(*c*) That said conclusions and order of the Commission were in derogation of said decree in holding that the facilities of the Terminal Association should be treated as a part of the trunk lines' own facilities, thus discriminating against Your petitioners and all other persons constituting the shipping public of South St. Louis using the lines of the Railway, by refusing to require the trunk lines to absorb the charges of the Railway, and thus to apply the St. Louis rates for the benefit of shippers using said lines, while at the same time permitting the trunk lines to continue hereafter to apply the St. Louis rates for the benefit of all competing shippers located upon the lines of the Terminal Association or of its subsidiary and proprietary lines, the services and conditions relating thereto in each class of cases being similar; that by such discrimination,
70 said conclusions and order tend to strengthen the very monopoly which said decree of this Honorable Court and of the Supreme Court condemned, by enabling said monopoly to further effectuate its unlawful purposes to the injury of these intervening shippers and of all other shippers using the lines of the Railway.

III. Said order is void to the extent that it permits or requires the trunk lines to charge, collect or receive rates in excess of the St.

Louis rates on interstate traffic moving to or from points on the lines of the Railway because:

(*a*) The complaint before the Commission alleged in substance: that the joint routes and rates evidenced by the tariffs cancelled as of March 1, 1910, were reasonable; that the cancellation of them and the refusal of the trunk lines to continue the rates evidenced by them, produced a result which was unreasonable, unjust and unlawful, to the great loss and damage of the complainants; and that thereby the shippers would be compelled to pay the charges of the Railway in addition to the St. Louis rates.

That in substance said complaint had shown that the trunk lines had increased and proposed to increase the freight rates by establishing new and increased rates covering interstate shipments applicable to all shippers located on or using the lines of the Railway.

(*b*) Section 15 of the "Act to Regulate Commerce" imposed on the trunk lines the burden of proving that such a proposed increase in rates was just and reasonable; and said proposed increases were by said complaint attacked by the complaining Railway and its shippers, as unjust and unreasonable.

That the Commission, as shown by said reports, instead of
71 requiring the trunk lines to assume said burden, and to prove the reasonableness of said proposed increase of rates, erroneously assumed their reasonableness without any substantial evidence to support any such assumption or conclusion, and thereby said order permits the carriers to keep and make effective an increase of rates applicable to shippers using the lines of the Railway, contrary to the provisions of the Act to Regulate Commerce, and in excess of the powers of the Commission, and to the injury and prejudice of these intervenors and all other shippers using said lines.

IV. The said order is void to the extent above indicated, because the Commission erred as a matter of law in concluding, upon the pleadings and the facts found by it, and the undisputed evidence before it, and in concluding, without any substantial evidence to support such conclusion, that it had no power to order the establishment of joint rates as the maximum to be charged, and to prescribe the divisions thereof, or the allowances or practices to be observed in respect thereto.

16. Your petitioners, intervenors, further show, upon information and belief, that the said unlawful conspiracy entered into against shippers using the lines of the Railway, and which is referred to in the petition of the Railway herein, still continues, and pursuant thereto concerted effort is being made to cause all of the trunk lines to refuse, some of the trunk lines will refuse, and some have already refused since the making of said order, voluntarily to apply the St. Louis rates to interstate traffic of Your petitioners moving over the lines of the Railway, all of which is and
72 will be violative of the rights of these intervenors and of all other shippers using said lines.

17. Your petitioners further show that as to the tariffs and rates made or to be made by any of the trunk lines who may now or hereafter, and pursuant to said order, refuse such voluntary action, Your

petitioners and all other shippers using the lines of the Railway will be required to pay the charges of the Railway in addition to the St. Louis rates, while at the same time their competitors in business located within the switching limits of the City of St. Louis and upon the lines of the Terminal Association or its subsidiary lines or of the trunk lines or their subsidiary lines, will be permitted to make and receive their shipments at the St. Louis rates, all to the great prejudice and injury of Your petitioners and of all other shippers using the lines of the Railway, and to the business and manufacturing plants conducted by them in South St. Louis.

18. That Your petitioners and many other shippers who use the lines of the Railway, are large receivers of freight sold and shipped to them by persons located in other states and territories of the United States, and in foreign nations, upon which shipments the freight charges are paid by said persons located in other states, territories and nations; that in dealing with and purchasing from such sellers, Your petitioners and other shippers using the lines of the Railway are and will be subjected to serious unjust and undue disadvantage, as compared with their competitors in St. Louis located on the lines of the Terminal Association or of its proprietary or subsidiary lines, and will thereby suffer irreparable loss.

19. That the burden of additional freight rates to South St. Louis in the district wherein the manufacturing and business industries of Your petitioners and of other shippers
73 using the lines of the Railway are located, and the said unjust discriminations against all such shippers and in favor of their competitors located on other lines in St. Louis, have already injuriously affected and irreparably injured said industries located on the lines of the Railway, as shipping points, and the desirability and value of such industries for the purposes for which they have heretofore been and are now being used; that not only the shippers using the lines of the Railway, but said entire locality has suffered and will continue to suffer irreparable injury and retarded growth and development as a manufacturing and commercial locality if such order should be permitted to stand, and if the trunk lines should be permitted to refuse to apply the St. Louis rates to shipments over the Railway; and that if said order should be permitted to stand as made, and is not enjoined as herein prayed, Your petitioners and all other shippers using the lines of the Railway, will as above shown, suffer irreparable damage and injury, not capable of definite ascertainment or of adequate relief in any proceeding other than this.

20. Your petitioners further show that unless a preliminary restraining order and an interlocutory injunction be granted as prayed in the petition of the Railway herein, said order of the Commission will be carried out in new tariffs effective February 15, 1915, under which your petitioners will, for the reasons and in the manner above stated, suffer irreparable damage and injury during the pendency of this proceeding.

Wherefore, Your petitioners pray: that said order be declared void and annulled, and that the enforcement thereof be enjoined,

to the extent that said order requires or permits the trunk
74 lines, or any other common carriers interchanging interstate freight traffic with the Railway, to make or keep effective any freight rates, applicable to interstate traffic moving to or from points on the lines of the Railway in excess of the St. Louis rates, so long as such carriers continue to apply the St. Louis rates, interstate shipments to or from points within the City of St. Louis located on the lines of the Terminal Association or any of its subsidiary lines, or on the lines of any of the trunk lines or their subsidiary or tenant lines, which perform terminal transportation services in the City of St. Louis; that said order be declared void and annulled, and that the enforcement thereof be further enjoined, to the extent that it permits the trunk lines, or any other carriers, interchanging interstate freight traffic with the Railway, to longer refuse to establish and make through routes with the Railway, applicable to interstate shipments to or from points on the lines of the Railway, with such rates applicable thereto, and with such divisions of or allowances out of the rates applicable thereto, and with such absorptions or practices or regulations in respect thereto, as will enable shippers using the Railway to make and receive their shipments at the St. Louis rates; that the injunctive relief hereinabove prayed be made effective by a preliminary restraining order pending the application for an interlocutory injunction, and by an interlocutory injunction pending the final hearing, and by a perpetual injunction thereafter; and Your petitioners further
75 pray for such other and further relief as to Your Honors may seem meet in the premises.

And Your petitioners further pray, that such writs, orders and processes of this Honorable Court, as may be appropriate to the subject matter of this petition of intervention and to the relief herein prayed, be duly issued and ordered served.

ANHEUSER-BUSCH BREWING ASSOCIATION,
LOUIS OBERT BREWING COMPANY,
ST. LOUIS BREWING ASSOCIATION,
THE INDEPENDENT BREWERIES COMPANY,
OTTO F. STIFEL'S UNION BREWING COMPANY,
GRIESEDIECK BROTHERS' BREWERY COMPANY,
GANAHL LUMBER COMPANY (FORMERLY FIDEL-GANAHL LUMBER COMPANY),
ST. LOUIS LUMBER COMPANY,
ST. LOUIS COOPERAGE COMPANY,
STECHER COOPERAGE WORKS,
WESTERN FOUNDRY AND SASH WEIGHT COMPANY,
INDEPENDENT LUMBER COMPANY,
HENRY QUELMALZ LUMBER AND MANUFACTURING COMPANY,

B. KLAUBER'S SONS' JUNK COMPANY,
A. KLAUBER'S SONS' IRON & METAL COMPANY,
STANDARD FURNITURE MANUFACTURING COMPANY,
G. CRAMER DRY PLATE COMPANY,
HAMMER DRY PLATE COMPANY,
JOHN NOOTER BOILER WORKS COMPANY,
J. H. BELZ PROVISION COMPANY,
ST. LOUIS BASKET AND BOX COMPANY,
CHRISTOPHER AND SIMPSON IRON WORKS COMPANY,
Petitioners,

By NAGEL AND KIRBY, Solicitors.

CHARLES NAGEL,
DANIEL N. KIRBY,
Of Counsel.

76 UNITED STATES OF AMERICA,
In the Eastern District of Missouri:

STATE OF MISSOURI,
City of St. Louis, ss:

On this 9th day of January, 1915, before me personally appeared A. A. Feuerbacher, who being by me duly sworn, deposes and says, on behalf of the above named petitioners, that he has read the foregoing petition and knows the contents thereof, and that the facts therein alleged are true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes said petition to be true.

WESTERN FOUNDRY & SASH WEIGHT CO.,
A. A. FEUERBACHER, *Sec'y & Treas.*

Subscribed and sworn to before me this 9th day of January, 1915.
My commission expires June 28th, 1917.
[SEAL.]
A. E. WRIGHT,
Notary Public.

77 And afterwards, to-wit on the 26th day of January, 1915 there was filed in said cause the Answer of the United States, in words and figures, as follows, to-wit:

(Answer of United States.)

78 In the District Court of the United States, Eastern District of Missouri, Eastern Division.

In Equity, No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner,
v.
UNITED STATES OF AMERICA.

Answer of the United States.

79 In the District Court of the United States, Eastern District of Missouri, Eastern Division.

In Equity, No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner,
v.
UNITED STATES OF AMERICA.

Answer of the United States.

First Defense.

United States, for a First Defense to the petition filed herein against it, says:

1. It admits that the petitioner seeks to invoke the jurisdiction of this court in pursuance of the jurisdiction heretofore vested in the Commerce Court, which said jurisdiction so vested in the Commerce Court was transferred to and vested in the several District Courts of the United States by the Urgent Deficiency Act, approved October 22, 1913.

2. The Commerce Court, under and by virtue of the limited jurisdiction conferred upon and vested in it, was without jurisdiction to hear and determine any issue drawn or case made under the
80 Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890. Petitioner having invoked the jurisdiction of this court in pursuance of the jurisdiction heretofore conferred upon and vested in the Commerce Court, and subsequently, by the Urgent Deficiency Act, approved October 22, 1913, transferred to and vested in the United States District Courts, this court is without jurisdiction, power, or authority to hear and determine any issue drawn or case made under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890.

3. Petitioner, in its said petition, and particularly paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 36, 37, and 38 thereof, seeks to invoke the

jurisdiction of this court to attack Terminal Railroad Association of St. Louis as an unlawful monopoly or combination existing in violation of an Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890.

4. Since the Commerce Court would have had no jurisdiction to hear and determine that part of the case set out in the petition relative to Terminal Railroad Association of St. Louis as being an unlawful monopoly or combination, hereinbefore referred to, this court, a fortiori, has no jurisdiction to hear and determine the allegations of the petition relative to the said Terminal Railroad Association of St. Louis as being an unlawful monopoly or combination.

81 5. Wherefore, defendant moves to strike from the petition, the matters and things contained in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 36, 37, and 38 thereof, and each and every part of the same, as beyond the jurisdiction and authority of the court to hear and determine.

Second Defense.

United States, for a Second Defense to the petition filed herein against it, says:

1. Manufacturers' Railway Company of St. Louis (except the Second Street line thereof), notwithstanding the finding of the Interstate Commerce Commission, is not a common carrier subject to the Act to Regulate Commerce.

2. Anheuser Busch Brewing Association, a corporation, engaged in the manufacture and sale of beer, is the principal party in interest. Its grain houses, malt houses, warehouses, brewing houses, rice houses, bottling works, repair shops, stables, etc., that make up the brewery plant, cover 35 or 40 city blocks within the corporate limits of the city of St. Louis, or a total area of 126 acres of ground, all closely covered with structures of one kind or another, in which the various processes in the manufacture and marketing of beer and related products are carried on. Some of these structures are individually as large as many factories.

3. In the early days of the enterprise the inbound raw material and the outbound products of the Anheuser Busch Brewing

82 Association were drawn by horse and wagon to and from the tracks of the St. Louis, Iron Mountain & Southern Railway Company at a point on the front of the Mississippi River near First Street, St. Louis. The plant is situated on the hills of South St. Louis, and the grade of the streets is such as to make it difficult and expensive to dray traffic in large volume to and from the rails of the carriers. With the growth of the industry, the use and maintenance of the horses and wagons became a large item in the manufacturing cost, and it was found essential about the year 1885 to abandon that means of doing the work, and to substitute a plant railway in order the more economically to move the increasing tonnage of the plant to and from the tracks of the carriers. The substitution of one form for the other of doing the same thing was brought about in the interest of the Anheuser Busch Brewing Association and not in any

degree in the interest of the shipping public. Substantially all the tracks (except the Second Street line) were laid for the Anheuser Busch Brewing Association, and for it alone.

4. Anheuser Busch Brewing Association and Manufacturers' Railway Company are owned, dominated, controlled, and operated, and always have been, by one and the same interest, to wit, Adolphus Busch and members of his family in his lifetime, and, since his death, the estate of Adolphus Busch and members of his family. The profits from the operation of each institution go to the same parties, who are few in number.

83 5. The rails that were installed by the industry to take the place of the horses and wagons run into and between the various buildings and through the narrow passageways that separate them. In some cases they are inclosed between the walls of these buildings, and in other cases by fences or walls surrounding open places adjacent to the buildings. The total length of the railway is about 25 miles, 2½ miles of which are represented by 3 stems, and the entire remainder by private spurs, team tracks, and yards of which the trackage within the three main departments of Anheuser Busch Brewing Association and its extensive classification yards east of the viaduct on the river front constitute the main and greater part. Manufacturers' Railway has four engines but no cars. It does not handle less than carload freight and has no passenger business. The tracks in the open yard of the bottling department, on the Ninth and Dorcas Streets sides, are inclosed by an iron fence on which are displayed "No thoroughfare" signs; the four team tracks in this yard end on the edge of an embankment supported by a concrete wall built up from Ninth Street, which is some 10 or 12 feet below, and topped with an iron fence. The tracks on the Thirteenth Street side of this department are ended some 10 or 15 feet below the street level by a stone wall and must therefore be reached by entries from other sides. The team tracks in the yard at Ninth and Pestalozzi Streets are enclosed by a high iron fence with swinging gates. The 25 or more ladder tracks in the yards beginning at Second and Pestalozzi Streets and running west to Broadway, are ended

85 some 25 feet below the level of Broadway by an embankment which is reinforced by a concrete or stone wall topped with an iron fence. As access to the latter tracks from the Broadway side is thus absolutely impracticable, entrance must be effected from Pestalozzi Street or between buildings of the brewery on the Arsenal Street side between Second and Broadway. While occasionally a car may be handled for patrons other than Anheuser Busch Brewing Association, such cars can not be set and delivered on those tracks except in negligible number because of the extensive business of Anheuser Busch Brewing Association. Those yards were never intended to be open to all shippers. The original lease under which those tracks were let by the Anheuser Busch Brewing Association to the petitioner provided that such tracks were to be available for the general public only when the handling of outside shipments did not interfere with the conduct of the business of the brewery, of which the brewery was to be the sole judge. At the present time the lease carries

no such limitations but the business is still conducted in the same manner.

6. In its complaint before Interstate Commerce Commission, Manufacturers' Railway Company asserted identity of ownership, operation, and control with Anheuser Busch Brewing Association by claiming allowances under Section 15 of the Act to Regulate Commerce, which provides that "if the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality
85 used therein, the charge and allowance therefor shall be no more than is just and reasonable."

7. The inbound and outbound traffic handled for the alleged independent shippers consists in the main, if not wholly, of local freight; or freight of which Anheuser Busch Brewing Association is either the consignor, consignee, seller, or purchaser thereof in the operation, management, and growth of its plant, all of which is handled on the tracks within and around the plant and the various buildings thereof not for and at the convenience of such shippers but for and at the sole convenience of Anheuser Busch Brewing Association.

8. Approximately 55,000 cars are handled annually by Manufacturers' Railway Company. With the exception of the cars handled on the Second Street line for shippers not connected with and independent of Anheuser Busch Brewing Association, which cars constitute but a very small percentage of the total, substantially the entire traffic is handled for Anheuser Busch Brewing Association, and the claim of the Manufacturers' Railway Company for allowances is based upon the services performed by Manufacturers' Railway Company wholly within the shipping plant of Anheuser Busch Brewing Association (except such services as may be performed on the Second Street line) and is not a transportation service within the meaning of the Act to Regulate Commerce for which the Manufacturers' Railway Company is entitled to make a charge, but is a plant service rendered for Anheuser Busch Brewing Association
86 exclusively, and any payment or allowance therefor by the trunk lines to Manufacturers' Railway would result in rebates, preferences, and discriminations in violation of the Act to Regulate Commerce.

9. Wherefore, Manufacturers' Railway Company (except the Second Street line thereof) is but a part of the manufacturing plant of Anheuser Busch Brewing Association and constitutes facilities thereof. As such it has no standing in a court of equity to annul and enjoin the order of the Interstate Commerce Commission and is not entitled to invoke the jurisdiction of the court in that behalf.

Third Defense.

United States, for a third Defense to the petition filed herein against it, says:

If Manufacturers' Railway Company, petitioner herein, is a common carrier engaged in commerce among the several States in man-

ner and form as found by the Interstate Commerce Commission in its said three reports, then—

1. Answering paragraph 1, defendant admits the matters and things alleged therein substantially in manner and form as alleged.

2. Answering paragraph 2, defendant admits the matters and things alleged substantially in manner and form as alleged with this exception: It has no knowledge of the number, whether few or many, of the shippers and receivers of freight moving over the lines of petitioner in connection with other common carriers, and it has no knowledge that they, or any of them, are solely dependent
87 upon the petitioner for the transportation, forwarding, and receipt of merchandise manufactured, used, or dealt in by them, and that their plants or places of business, or any of them, have no track connection with any common carrier other than petitioner, or of the number of other shippers so located as to be served not only by the petitioner, but in competition therewith, by lines of other railroad companies, except as appears from the three reports of the Interstate Commerce Commission herein referred to, and for accuracy as to the facts with reference thereto, respondent refers to and relies upon the said three reports.

3. Answering paragraph 3, defendant denies that the petitioner is a common carrier, in manner and form as alleged, and to the extent alleged, and that the public has the right to demand and use the facilities of petitioner as a common carrier in manner and form as alleged, and to the extent as alleged, and that the petitioner has complied with all of the requirements and regulations of the Act to Regulate Commerce, and has conducted its business subject to and in accordance with the provisions of said Act, and with the rules, orders, and requirements of the Commission, in manner and form as alleged, and to the extent as alleged. The extent to which petitioner is a common carrier, if at all, and its operations as such, are fully set forth in the said three reports of the Interstate Commerce Commission, to which the defendant for accuracy as to the facts refers.

4. Answering paragraph 4, defendant admits the matters
88 and things alleged in parts 1, 2, 3, and 4 thereof, substantially in manner and form as alleged, but for greater accuracy with respect thereto defendant refers to the three reports of the Commission.

Further answering paragraph 4, this defendant denies the matters and things alleged in parts 5, 6, and 7 thereof, in manner and form as alleged, and for the true facts with reference to the matters therein sought to be set up this defendant refers to the said three reports of the Commission.

5. Answering paragraph 5, defendant admits the matters and things therein alleged substantially in manner and form as alleged, but for greater accuracy with respect thereto defendant refers to the said three reports of the Commission.

6. Answering paragraph 6, defendant has no knowledge of the matters and things therein alleged and it neither admits nor denies the same, and in so far as the same become material upon the hearing it will require strict proof thereof.

7. Answering paragraph 7, defendant has no knowledge of the matters and things therein alleged, and it neither admits nor denies the same, and in so far as the same become material upon the hearing it will require strict proof thereof.

8. Answering paragraph 8, defendant denies the matters and things therein alleged, and each and every part of the same, in manner and form as alleged, and for the true facts with ref-
89 erence to said matters, and to each of them, defendant refers to the said three reports of the Commission.

9. Answering paragraph 9, defendant denies the matters and things therein alleged, and each and every part of the same, in manner and form as alleged, and for the true facts with reference to said matters, and to each of them, defendant refers to the said three reports of the Commission.

10. Answering paragraph 10, defendant denies the matters and things therein alleged, in manner and form as alleged, and in so far as the same become material upon the hearing, in manner and form as alleged, it will require strict proof thereof.

Defendant says that the matters and things referred to in said paragraph 10 were before the Interstate Commerce Commission and are embraced within its said reports, to which defendant refers for accuracy.

11, 12, 13, and 14. Answering paragraphs 11, 12, 13, and 14, defendant has no knowledge of the matters and things therein alleged, in manner and form as alleged, or any part of the same, and in so far as the same become material upon the hearing defendant will require strict proof thereof.

15. Answering paragraph 15, defendant denies the matters and things therein alleged, in manner and form as alleged, and each and every part of the same.

16. Answering paragraph 16, defendant has no knowledge of the matters and things therein alleged, and it neither admits nor denies the same, and in so far as the same become material upon the hearing it will require strict proof thereof.

90 17. Answering paragraph 17, defendant admits that petitioner and certain shippers filed their complaint with the Commission on their own behalf, as alleged in part 1 of said paragraph. As to the contents of the said complaint and with reference to the further allegations contained in paragraph 17, particularly in parts 2, 3, and 4 thereof, this defendant has no knowledge of the matters and things therein alleged, in manner and form as alleged, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof. As to the contents of the said complaint and the issues before the Interstate Commerce Commission, and what was found thereon by the said Commission, this defendant refers to the said three reports of the Commission.

18. Answering paragraph 18, defendant admits the matters and things therein alleged substantially in manner and form as alleged, but for greater accuracy with reference thereto defendant refers to the said three reports of the Commission.

19. Answering paragraph 19, defendant denies that the record before the Commission disclosed the facts in all respects in manner and form as the petitioner has alleged them to be.

20. Answering paragraph 20, defendant admits that on June 21, 1911, the Commission filed its first report. Defendant denies that the Commission found in its said first report in manner and form as petitioner alleges, but for the facts found by the Commission defendant refers to the said report in its entirety. Defendant
91 admits, however, the excerpts quoted from the said first report of the Commission as true and correct, but defendant alleges that the said excerpts constitute but a small part of the said report and should be considered not only in connection with the said report in its entirety but should also be considered in connection with the second and third reports of the Commission in their entirety.

21. Answering paragraph 21, defendant denies that the Commission found in its said first report in manner and form as petitioner alleges, but for the facts found by the Commission defendant refers to the said first report in its entirety. Defendant admits, however, the excerpts quoted from the said first report, but defendant alleges that the said excerpts constitute but a small part of the said report and should be considered not only in connection with the said report in its entirety but should also be considered in connection with the second and third reports of the Commission in their entirety.

22. Answering paragraph 22, defendant admits that the Commission found as therein alleged. But defendant alleges that the excerpt quoted should be considered not only in connection with the said report in its entirety but should also be considered in connection with the second and third reports of the Commission in their entirety.

23. Answering paragraph 23, defendant admits the language alleged to have been used by Mr. Commissioner Lane in his
92 concurring opinion. But defendant alleges that the excerpt should be considered not only in connection with the said report in its entirety but should also be considered in connection with the second and third reports of the Commission in their entirety.

24. Answering paragraph 24, defendant denies that the Commission determined in favor of the petitioner and the complaining shippers on all of the questions affecting them. Defendant admits that the Commission did not determine the further question of the divisions or allowances and reserved the same for further consideration. Defendant admits the excerpt referred to but alleges that the same should be considered not only in connection with the said report in its entirety but should also be considered in connection with the second and third reports of the Commission in their entirety.

25. Answering paragraph 25, defendant admits the same.

26. Answering paragraph 26, defendant admits the matters and things therein alleged with this exception: It denies that the Commission did not find any substantial fact which was in conflict with its findings evidenced in the first report. It alleges that the Commis-

sion, in its second report, modified and changed in very substantial respects certain of the facts found in its first report, and that it also did, to a substantial extent, modify and change its conclusions of law applicable to the facts, all of which is more fully set
93 forth in the second report in its entirety, to which reference is here made.

27. Answering paragraph 27, defendant admits that in the said second report the Interstate Commerce Commission used the language referred to. Defendant alleges, however, that the language should be considered not only in connection with the said second report in its entirety, but should also be considered in connection with the said three reports in their entirety.

28. Answering paragraph 28, defendant admits, subject to verification, the excerpt from the second report of the Commission in said paragraph. Defendant alleges, however, that the language used should be considered not only in connection with the second report in its entirety, but in connection with the said three reports of the Commission in their entirety. As to the remaining allegations of paragraph 28, defendant denies the same, and each and every part of the same, in manner and form as alleged.

29. Answering paragraph 29, defendant admits the language contained in the excerpt from the second report of the Commission. Defendant alleges, however, that the language used should be considered not only in connection with the second report in its entirety, but in connection with the said three reports of the Commission in their entirety.

30. Answering paragraph 30, defendant denies the matters and things therein alleged in manner and form as alleged, and
94 specifically denies that the Commission erroneously concluded as a matter of law that the terminal facilities offered by the Terminal Railroad Association and its operating subsidiaries were to be treated and considered as extensions of the facilities of the trunk lines, and not as the facilities of independent terminal companies.

Defendant alleges that the findings of the Commission on the matters and things alleged in said paragraph 30 are fully set out in the said three reports of the Commission to which the defendant for accuracy refers.

31. Answering paragraph 31, defendant has no knowledge of the matters and things therein alleged in manner and form as alleged, and it neither admits nor denies the same, and if the same become material upon the hearing in manner and form as alleged, defendant will require strict proof thereof. Defendant alleges that the matters and things alleged in paragraph 31 are embraced within the said three reports of the Commission, to which the defendant for accuracy refers.

32. Answering paragraph 32, defendant admits the matters and things therein alleged.

33. Answering paragraph 33, defendant—

(a) Admits that the Commission found that petitioner is a com-

mon carrier subject to the provisions of the act to regulate commerce.

(*b*) Admits the matters and things alleged in part (*b*) in manner and form as alleged with this exception: It has no knowl-
95 edge that the trunk lines did not discontinue absorptions of the terminal charges of the Terminal Railroad Association, and it neither admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof.

(*c*) Admits that the Commission found as alleged in part (*c*), but defendant says that the language contained in the excerpt from the report of the Commission should be considered not only in connection with the said report in its entirety, but in connection with the three reports of the Commission in their entirety.

(*d*) Admits that the Commission found as alleged in part (*d*), but defendant alleges that the language contained in the excerpt from the report of the Commission should be considered not only in connection with the report of the Commission in ts entirety, but in connection with the three reports of the Commission in their entirety.

(*e*) Admits that the Commission found substantially as alleged in part (*e*), but defendant alleges that the finding of the Commission should be considered in the light of the report of the Commission in its entirety and in connection with the three reports of the Commission in their entirety.

(*f*) Admits that the Commission found substantially as alleged in part (*f*), but defendant alleges that the finding of the Commission should be considered in the light of the report of the Commission in its entirety, and in the light of the three reports of the Commission in their entirety.

96 (*g*) Admits the matters and things alleged in part (*g*) in manner and form as alleged.

34. Answering paragraph 34, defendant admits the matters and things therein alleged.

35. Answering paragraph 35, and as to the matters and things to which it specifically relates and complains of therein, defendant denies that to the extent that the findings and conclusions of the Commission involved questions of fact there was no substantial evidence to support such findings and conclusions; and denies that the Commission erred, in its conclusions on undisputed facts; and denies that the Commission erred in making its findings and conclusions and in making and issuing said order; and denies that any of the findings and conclusions were either based upon mistakes of law or are without substantial evidence to support them, or that they are contrary to the undisputed evidence, or that they are beyond the constitutional or statutory powers of the Commission; and denies that said order or any of the findings of the Commission and conclusions constituting part thereof, and upon which said order was made and rests, were and are unlawful; and denies that the said order or any of said findings and conclusions are in violation and denial of the rights of petitioner under the Constitution and laws of the United States.

I. Defendant denies that the order of the Commission is void to the extent alleged in subdivision I of said paragraph, for the reasons given.

97 (*a*) Defendant denies the matters and things alleged in part (*a*) of said subdivision I of said paragraph, and each and every part of the same.

(*b*) Defendant denies the matters and things alleged in part (*b*) of subdivision I of said paragraph, and each and every part of the same.

(*c*) Defendant denies the matters and things alleged in part (*c*) of subdivision I of said paragraph, and each and every part of the same.

II. Defendant denies that said order is void as in contravention of the decree of this court and of the Supreme Court of the United States in United States v. Terminal Railroad Association, 224 U. S., 383.

(*a*) Defendant denies that the Commission erred in manner and form as alleged in part (*a*) of subdivision II of said paragraph, and it specifically denies anything therein to the contrary alleged.

(*b*) Defendant denies that the conclusions of the Commission referred to in part (*b*) of subdivision II of said paragraph, were made without substantial evidence to support them and were contrary to the facts before the Commission, and it denies that the said conclusions were contrary to said decree. Defendant specifically denies anything of said part (*b*) of subdivision II of said paragraph to the contrary alleged.

(*c*) Defendant denies that the conclusions and order of the Commission were in derogation of said decree in manner and form as alleged in part (*c*) of subdivision II of said paragraph in manner and form as alleged.

98 III. Defendant denies that said order is void to the extent alleged in subdivision III of said paragraph, for the reasons given or for any of them.

(*a*) Defendant denies that the said order is void for the reasons alleged in part (*a*) of subdivision III of said paragraph, or for any of them. Defendant has no knowledge that in substance the complaint had shown that the trunk lines had increased and proposed to increase the freight rates by establishing new and increased rates covering interstate shipments as to all shippers located on or using the lines of the Railway, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

(*b*) Defendant denies that said order is void for or by reason of the matters and things alleged in part (*b*) of subdivision III of said paragraph, or for any of them, or that the said reasons in manner and form as alleged form any basis for declaring void the said order.

IV. Defendant denies the matters and things of subdivision IV of said paragraph in manner and form as alleged, and each and every part of the same.

V. Defendant denies the matters and things alleged in subdivi-

sion V of said paragraph in manner and form as alleged, and each and every part of the same.

36. Answering paragraph 36, defendant has no knowledge of the matters and things alleged, and it neither admits nor denies
99 the same, and if the same become material upon the hearing it will require strict proof thereof.

37. Answering paragraph 37, defendant has no knowledge of the matters and things therein alleged, in manner and form as alleged, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

38. Answering paragraph 38, defendant denies the matters and things therein alleged, in manner and form as alleged, and each and every part of the same.

39. Answering paragraph 39, defendant denies the matters and things therein alleged, in manner and form as alleged, and each and every part of the same with this exception: The effective date of the order of the Interstate Commerce Commission has been by the Commission postponed to and including February 15, 1915.

Further answering the petition, and each and every part of the same, in so far as it has not heretofore been admitted, denied, or otherwise traversed, defendant denies—

(a) Any fact or facts allged in said petition, or any part of the same, which deny, or which seek to deny, any fact or facts found by the Interstate Commerce Commission in its said reports and order.

(b) Any fact or facts alleged in said petition, or any part of the same, which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order.

100 (c) Any and all inferences of fact from any particular fact or facts alleged in the said petition, or any part of the same, which seek to deny, or which are inconsistent with, any fact or facts found by the Interstate Commerce Commission in its said reports and order.

(d) Any fact or facts alleged in said petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Interstate Commerce Commission.

(e) Any fact or facts alleged in said petition, or any part of the same, which attack, or which seek to attack, the reports and order of the Interstate Commerce Commission, and to show facts contrary to what the said reports and order show on the face thereof.

(f) Any allegations in said petition, or any part of the same, which allege that facts were found by the Interstate Commerce Commission in its said reports and order which, as shown on the face thereof, in fact were not so found.

(g) Any conclusions of law alleged and insisted upon in the said petition, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission in its said reports and order.

Defendant gives notice that upon the final hearing hereof, or upon any preliminary hearing hereof, and in accordance with section

1 of the Act entitled "An Act to create a Commerce Court,"
101 etc., June 18, 1910, it will move to dismiss the petition, for that the same is insufficient to state any cause of action.

Fourth Defense.

United States, for a Fourth Defense to the petition filed herein against it, says:

If Manufacturers' Railway Company, petitioner herein, is a common carrier engaged in commerce among the several States in manner and form as found by the Interstate Commerce Commission in its said three reports, then—

Defendant alleges that the matters and things alleged in the petition, and sought to be put in issue, were all before the Interstate Commerce Commission, and were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Act to Regulate Commerce. In its reports in writing with respect thereto, made after full hearings and on due notice to all of the parties, which state its conclusion, together with its decision, order, or requirement in the premises, the matters and things of which complaint is made were fully considered and foreclosed by findings of fact, based on substantial evidence adduced on the issues made by the parties.

Fifth Defense.

United States, for a Fifth Defense to the petition filed herein against it, says:

The court is without jurisdiction to annul and enjoin the order of the Interstate Commerce Commission, or any part of the
102 same, and may not grant the relief prayed with respect thereto, or any part of the same, for that the said order is a negative order.

Wherefore, having fully answered, defendant prays that the petition be dismissed at the cost of the petitioner, and for such other and further order as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
ARTHUR L. OLIVER,
United States Attorney,
Eastern District of Missouri, Eastern Division.

103 And afterwards, to-wit on the 10th day of February, A. D. 1915, the following proceedings were had and appear of record in said cause, as follows: to-wit:

(Order Appointing Examiner.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

MANUFACTURERS' RAILWAY COMPANY, a Corporation, Complainant,
vs.
UNITED STATES OF AMERICA, Defendant.

In Equity. No. 4385.

On application of said complainant by solicitor, and it appearing to the Court that this cause is at issue, and that an exceptional condition exists requiring the appointment of an examiner to take testimony in this cause, it is now ordered that Byron F. Babbitt, Esq., of St. Louis Missouri, be and he is hereby appointed as a Special Examiner to take such proofs as may be offered on behalf of either party to this cause, and that he be and is hereby invested with all the powers conferred upon examiners conformably to the rules and practice in equity; and the said Examiner is directed to proceed with the taking of such proofs not later than February 15th, 1915, and that a copy of this order be served on Counsel for complainants and on the United States Attorney for the Eastern District of Missouri, for the Defendant.

(Signed) ELMER B. ADAMS,
Circuit Judge.

I hereby acknowledge receipt of a copy of the above and foregoing order. Feb. 10, 1915.

ARTHUR L. OLIVER.

We hereby acknowledge receipt of a copy of the above and foregoing order. Feb. 11, 1915.

NAGEL & KIRBY,
By H. C. FAIR.

104 And afterwards, to-wit on the 15th day of February, A. D. 1915, there was filed in said cause, the Answer of the Interstate Commerce Commission, in words and figures as follows, to-wit:

(*Answer of Interstate Commerce Commission.*)

105 In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4385.

MANUFACTURERS RAILWAY COMPANY, Petitioner,
v.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of the Interstate Commerce Commission.

Joseph W. Folk, Charles W. Needham, Edward W. Hines, Counsel.

106 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Equity. No. 4385.

MANUFACTURERS RAILWAY COMPANY, Petitioner,
v.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of the Interstate Commerce Commission.

The Interstate Commerce Commission having entered its appearance in the above-entitled cause as a respondent, now and at all times saving to itself all benefit and advantage of exceptions to the petition herein, for answer thereunto or to so much or such parts hereof as this respondent is advised it is material to make answer, answering, says:

I.

This respondent states that the petition herein does not present a justiciable issue triable by this court in so far as petitioner complains of the refusal of this respondent to make an order or orders. Said action or nonaction by this respondent is negative and not within the jurisdiction of this court to review.

107 This respondent states that the only question that can be considered by the court is the validity of the order that was made and not the validity or invalidity of the order or orders that this respondent did not make and refused to make.

With respect to the order that was made this respondent says that the petition herein does not present a justiciable issue triable by this court, in that it does not appear that this respondent was without jurisdiction under the act to regulate commerce to enter the order referred to in the petition; or that this respondent did not grant a

full hearing to the parties before the entry of said order, or that there was any irregularity in the proceedings before this respondent prior to the entry of said order; nor does the petition set forth any or sufficient facts to show confiscation of petitioner's property; or any violation of the constitutional rights of the petitioner, entitling it to the relief, or any part thereof, prayed for. This respondent, therefore, moves to dismiss the petition.

II.

This respondent admits the filing of petition before it on or about March 4, 1910, by the Manufacturers' Railway Co., Anheuser-Busch Brewing Association, and others as complainants, and that said cause before the respondent, Interstate Commerce Commission, was and is docket No. 3151.

Respondent admits that the defendants in said cause were
108 the St. Louis, Iron Mountain & Southern Railway, Missouri Pacific Railway, Wabash Railroad, Missouri, Kansas & Texas Railway, St. Louis & San Francisco Railroad, St. Louis Southwestern Railway, and the other carriers set out in section 1 of the petition herein. This respondent states that in said petition said Manufacturers Railway sought to have established through routes and through or joint rates with the carriers defendants in said cause and asked this respondent to order said carriers to put the St. Louis rates in effect to points along the line of said Manufacturers Railway and to give a division of said rates to said Manufacturers Railway of $4.50 a car. The Manufacturers Railway in said petition alleged that the carriers aforesaid were discriminating against the Manufacturers Railway in favor of the Terminal Railroad Association of St. Louis (hereinafter referred to as the Terminal Association) in that said carriers filed tariff schedules for points on the rails of the Terminal Association at the St. Louis rate which it was alleged they refused to do with respect to points on the line of the Manufacturers Railway Co.

This respondent states that in its several reports and findings, which are hereto attached, marked "Exhibits A, B, and C," and made parts hereof, it found that said Manufacturers Railway Co. was a common carrier to the extent and for the purposes set out and specified in said reports; that the Manufacturers Railway is a switching railway, with about 2¼ miles of main track and about 22½ miles of branches and sidings, and that, based upon the figures for the first eight months of 1912, approximately 85
109 per cent of the business done by said Manufacturers Railway, with the exception of its line on Second Street, is furnished by the Anheuser-Busch Brewing Association, and that about 76 per cent of the total business of the Manufacturers Railway Co., including the traffic of its Second Street line, is handled for the Anheuser-Busch Brewing Association; that the Anheuser-Busch Brewing Association is engaged in the brewing business in the city of St. Louis; and that the majority of the stock of that associa-

tion is owned by the holders of a majority of the stock of the Manufacturers Railway Co.

Respondent states that it further found, while the Manufacturers Railway Co. is a common carrier to the extent indicated in reports of this respondent referred to, nevertheless the divisions of through rates between it and the trunk lines, or allowances made by trunk lines which it might receive, might, in view of the common ownership, as aforesaid, of the stock of the Manufacturers Railway and the Anheuser-Busch Brewing Association, be so excessive as to be equivalent to a rebate to the Anheuser-Busch Brewing Association and the stockholders therein.

This respondent states that it found, as appears from its said reports, that the Anheuser-Busch Brewing Association, its grain houses, malt houses, warehouses, brewing houses, rice houses, bottling works, repair shops, stables, etc., connected with the brewing plant, cover 35 or 40 city blocks in the city of St. Louis; that the plant embraces 126 acres of ground all closely covered with
110 structures of one kind or another from which the various processes in the manufacture and marketing of beer and its related products are carried on; that the tonnage shipped by said brewing association is very large, amounting in the year 1910 to approximately one-thirtieth of the total tonnage shipped from or to the entire city of St. Louis; that for a number of years following the inception of the business of the brewing association the inbound raw materials and outbound products were drawn by horse and wagon from and to the tracks of the trunk line known as the St. Louis, Iron Mountain & Southern Railway at a point on the river front near First and Arsenal Streets in the city of St. Louis; that in 1885 the horse-and-wagon method was abandoned and a plant railway operated by steam was substituted, this railway being the Manufacturers' Railway Co., petitioner herein.

Respondent states, as appears from its said reports, that substantially all of the tracks of the Manufacturers Railway Co., except the one on Second Street, were laid to accommodate the business of the Anheuser-Busch Brewing Association; that with an occasional exception the streets paralleling the Mississippi River in the city of St. Louis are numbered consecutively, four of the streets, one block apart, crossing the numbered streets at right angles being, beginning at the north, Lynch, Dorcas, Pestalozzi, and Arsenal; and within the rectangular area of some 35 or 40 blocks bounded by Lynch Street on the north, Arsenal on the south, and
111 from First Street west to Thirteenth, inclusive, are scattered the various plant brewery houses and shops of the Anheuser-Busch Brewing Association; that the tracks within this area are leased by the brewery to the Manufacturers Railway at a rental of $24,000 annually; that the squares bounded by the streets Ninth, Thirteenth, Lynch, and Dorcas; Ninth, Eleventh, Pestalozzi, and Arsenal; and Second, Broadway, Pestalozzi, and Arsenal are devoted to buildings and yards of the brewery exclusively; that the tracks of the Manufacturers Railway serving the department located in this area are in and between buildings and sheds of the brewery

and the yards adjoining and are practically inclosed on some sides by buildings with passageways between and on other sides by a fence or wall surrounding the yards contiguous to the buildings; that all of the tracks within these yards are essential to the operation of the brewery, except four team tracks in the yards contiguous to the bottling department at Ninth and Dorcas; that the tracks of the Manufacturers Railway in the open yard of the bottling department of the brewery on the Ninth and Dorcas Streets side are inclosed by an iron fence, on which are displayed "No thoroughfare" signs, and the four public team tracks in this yard, spoken of above, are on the edge of an embankment supported by a concrete wall built up from Ninth Street, which is some 10 or 12 feet below, and topped with an iron fence; that the tracks on the Thirteenth Street side of this department are ended some 10 or 15 feet below the street level by a
112 stone wall and are inaccessible except by entries from other sides; that the team tracks in what is known as the Budweiser yard at Ninth and Pestalozzi Streets are inclosed by a high iron fence with swinging gates; and that the 25 or more ladder tracks in the yards of the keg department beginning at Second and Pestalozzi Streets and running west to Broadway are ended some 25 feet below the level of an embankment which is reinforced by a concrete or stone wall topped with an iron fence; that entrance to these latter yards must be effected from Pestalozzi Street or between buildings of the brewery on the Arsenal Street side between Second and Broadway; that the tracks mentioned in all these departments and along Pestalozzi and Dorcas Streets belong to the Anheuser-Busch Brewing Association and are leased by the brewery to the Manufacturers Railway; that this lease originally provided that the tracks would be available for the general public only when the handling of outside shipments did not interfere with the conduct of the business of the brewery, of which the brewery was to be the sole judge. Respondent states, as appears by its second report, that, following the original hearing before this respondent, this lease was amended in this respect and the clause referred to eliminated.

This respondent states, as appears from its said reports, that in 1908 the Manufacturers Railway constructed a viaduct from First and Pestalozzi Streets east along Pestalozzi Street toward the river over the intervening tracks of the Iron Mountain on the river
bank which viaduct, after clearing those tracks, curves north
113 to a parallel with them and gradually descends to their level.

The Dorcas and Pestalozzi Street lines are connected by a cross-over from the Dorcas Street line to the Pestalozzi Street line at about Second Street, the lines so merged continuing east in Pestalozzi over the viaduct to points of interchange some distance beyond the foot of the viaduct with the St. Louis Transfer Railway Co., the tracks of which parallel those of the Iron Mountain Railway Co. nearer the river; that the St. Louis Transfer Railway connects with the Wiggins Ferry Co. a short distance north of this point of interchange, and the Wiggins Ferry Co. delivers to the East St. Louis Connecting Railway on the Illinois side of the river; that the St. Louis Transfer Railway, the East St. Louis Connecting Railway,

and the Wiggins Ferry Co., as well as practically all of the terminal and belt railroads on each side of the Mississippi River and the bridges or ferries connecting them, are owned and controlled by the 14 trunk lines entering St. Louis through the medium of the Terminal Association, the stock of which they own; that the only individual trunk line which owns separate terminals on each side of the river and the necessary connecting car ferry between them is the St. Louis, Iron Mountain & Southern Railway Co., and these facilities of that carrier are in addition to its interest in the Terminal Association, in which it is one of the proprietary lines; that on all traffic to and from the east the trunk lines entering St. Louis
114 are dependent upon the facilities afforded by the Terminal Association, and that the Manufacturers Railway is likewise dependent upon the facilities of the Terminal Association as an inlet and outlet to all of its traffic; that with the exception of the Iron Mountain Railway, as noted, it is essential for the trunk lines, in order to enter St. Louis, to make use of the facilities of the Terminal Association, whereas the tracks of the Manufacturers Railway are not at all necessary to get into the city of St. Louis and are not reached by the trunk lines until they have entered the city of St. Louis through the facilities afforded by the Terminal Association.

Respondent further states, as appears in its said reports, from 1888 to 1908, during which time, before the construction of the viaduct referred to, its only points of interchange were with the St. Louis, Iron Mountain & Southern Railway, the Manufacturers' Railway Co. was operated by the St. Louis, Iron Mountain & Southern Railway under lease of its tracks, under which it received from the Iron Mountain Railway or other trunk lines from $3.50 to $5.50 per car on all of its shipments received from or delivered to them, including the shipments of the brewery as well as of the independent shippers on its rails; that the trunk lines continued to make these allowances to the Manufacturers' Railway until the latter part of the year 1909, when they gave notice of their intention to cancel
115 all allowances, not only to the Manufacturers' Railway but to a number (12) of industrial lines or plant facilities located in South St. Louis, to which they had also previously been making allowances.

Respondent states that the proceeding before this respondent by the Manufacturers Railway Co. and others against the trunk lines above referred to was then filed, and following an interlocutory decision of the Commission, June 21, 1911, to the effect that the Manufacturers Railway was a common carrier for the purposes indicated, and that the trunk lines by canceling the aforesaid allowances to the Manufacturers Railway while contemporaneously making allowances to the St. Louis Terminal Association were unjustly discriminating against said Manufacturers Railway, practically all of the trunk lines reinstated their allowances to the Manufacturers Railway. This respondent further states, however, that respondent did not pass upon the reasonableness of the amounts formerly received by the Manufacturers Railway from the trunk lines, but did, on the contrary, ex-

pressly reserve that question for further consideration after supplemental hearing. Following the supplemental hearing had upon the questions reserved, this respondent, upon the additional testimony introduced by the parties, modified its former finding of undue discrimination and held that there was no undue discrimination by the trunk lines in absorbing the charges of the Terminal Railway Association and refusing to absorb the charges of the Manufacturers Railway Co.; that the Terminal Association service is a part of the transportation service in order to deliver freight in the city of St.
116 Louis, and that the service performed by the Manufacturers Railway Co. is a service that comes into play only after the freight has reached the city of St. Louis. This respondent in its decision of June 21, 1913, aforesaid, after consideration of the evidence presented by the record of testimony taken at the several hearings and considering all the facts and circumstances and conditions, held that the former payments of $4.50 per car to the Manufacturers' Railway Co. were in no sense divisions of joint rates as for services rendered for the shippers served by that railway, as they would be considered under joint rates prescribed by an order of the Commission, but were merely allowances out of the trunk lines rates; that in the absence of an undue discrimination with respect to this absorption the Commission could make no lawful order with respect thereto; that the trunk lines in delivering the freight at the St. Louis rate at points on the rails of the Terminal Association and refusing contemporaneously to bear the expense of similar deliveries by the Manufacturers Railway Co. upon the rails of that carrier were not subjecting the Manufacturers Railway Co. and its shippers to undue prejudice and disadvantage; that respondent found in said report that joint rates between the Manufacturers Railway and the trunk lines should be established, and that in respondent's opinion the division of the joint rates accruing to the railway should not exceed $2 per car; that respondent, however, made no definite finding in this re-
spect and made no order fixing that amount as the Manu-
117 facturers Railway Co.'s division of the joint rate, but respondent, on the contrary, expressly reserved the question of the amount of the division that might lawfully be received by the Manufacturers Railway Co. to future hearing and consideration if the necessity for such further proceedings should later arise.

Respondent further states that upon petition of the Manufacturers' Railway and the other petitioners they were granted a reargument of said original cause, and, after again considering the entire record and all the facts and circumstances, this respondent rendered its decision dated July 10, 1914, filed November 5, 1914, in which this respondent held that while it could not require the trunk lines to participate with the Manufacturers' Railway in joint rates which would not be higher than the St. Louis rates, the Manufacturers Railway and the trunk lines might voluntarily participate in joint rates on that basis, provided that in a final division of the through charge received from the shippers the trunk lines did not pay the Manufacturers' Railway for its service more than was just and reasonable and did not thereby, in the amount of the excess, indirectly refund to the Anheuser-Busch

Brewing Association a part of the through transportation charge paid to the trunk lines by the brewing association; that respondent also in that report modified its former opinion that $2 per car would be reasonable compensation to the Manufacturers' Railway Co., increasing that amount to $2.50 per car; that respondent did
118 not condemn the voluntary payment by the trunk lines to the Manufacturers' Railway of reasonable divisions, but did in its report of June, 1913, condemn the payment of $4.50 per car allowances (not divisions) as affecting unlawful results, not under section 15 of the act to regulate commerce relating to the division of joint rates, but under other provisions of the act to regulate commerce which prohibit the granting or receiving of rebates or concessions by any device whatsoever.

In its last report and decision this respondent stated (32 I. C. C., 103):

It will require the establishment and maintenance by complainant railway and its trunk line connections, defendant herein, of maximum joint rates to and from points on the complainant railway which shall not exceed in amount the trunk lines' rates to and from St. Louis by more than $2.50 a car. Then, whether the carriers in the through route establish rates on that maximum basis or, through the voluntary agreement of the trunk lines, on a basis not higher than their St. Louis rates, upon failure of the trunk lines and the complainant railway to agree upon the proper basis of division thereof, and upon request to us so to do, we shall fix the divisions, upon further investigation, as provided in the act. If that inquiry shall confirm our present impression that $2.50 a car is a reasonable division to the complainant railway, we shall grant it that amount.

If, on the other hand, we shall be convinced by the evidence
119 that $2.50 a car is too much or not enough, we shall fix the amount accordingly. Or, in case we are not asked by the carriers to fix the divisions, upon proper cause appearing we may in our discretion institute an inquiry upon our own motion under those provisions of the act which forbid the giving or receiving of rebates or undue concessions directly or indirectly by any device whatsoever, having in mind particularly in connection therewith the fact of the common ownership of railway and brewery association stock. There must, in any view taken of this case, be some point at which the fact of this common ownership of stock becomes importantly significant; and immediately beyond the limit of reasonableness in allowances, divisions, or concessions of any kind whatsoever granted by the trunk lines to the complainant railway comes, in the Commission's view, that point. If this be not so, then gross discriminations must thrive, notwithstanding the inhibitions of the act against undue preferences and discriminations. Manifestly, it would be absurd for anyone to contend that the receipt by the complainant railway of a division amounting to $10 or $15 a car would not be viewed with suspicion. It is only as we approach a sum which on its face may or may not be reasonable that we encounter question from any source as to the necessity for close scrutiny and regulation in this respect. In all other respects but this one of closer examina-

tion and regulation of its divisions and concessions we treat the complainant railway herein just as we would treat any other
120 terminal common carrier that does not serve a mutually owned industry shipper.

We shall make our order herein against the complainant railway as well as against the trunk lines in the full understanding that the former is named in the petition as a complainant and not as a defendant. However, the prayer of the petition can be granted only upon the theory that the complainant railway asks and expects to be dealt with upon the same basis as any other common carrier in the through routes over which it asks for the establishment of joint rates would be. The fact that the complainant railway is made a nominal complainant in the petition and has been the principal complainant in fact throughout the conduct of the hearings fits in admirably with what seems to be the real purpose of the proceeding, namely, to make the trunk lines the real defendants and to have us require them to restore to the complainant railway out of their St. Louis rates the former allowances. Were the object of the proceeding to secure bona fide joint rates for the benefit primarily of the complainant railway's shipping public, the complainant railway could just as easily, and in procedure more properly, have been named with the trunk lines as a codefendant in the through route in a complaint brought and prosecuted exclusively by its shippers as a body, including certainly and conspicuously, because of its greater interest in the outcome, the brewing association. It is significant as bearing upon this latter thought that following the promul-
121 gation by us of our supplemental report the complainant railway canceled all its concurrences in the trunk lines' tariffs, thereby rendering impossible compliance by the trunk lines with the prayer of its own petition, since tariffs naming joint rates must, under the act and our tariff regulations, show as concurring therein every common carrier in the through route.

The joint rates prescribed herein may be published, if desired, by merely adding to the trunk lines' tariffs naming rates to and from St. Louis a note to the effect that rates to and from points on the complainant railway will be so much a car higher than the rates to and from St. Louis and by showing the complainant railway as a participating carrier therein. If the trunk lines elect voluntarily to participate in the establishment and maintenance of rates to and from points on the complainant railway on the St. Louis basis, it will only be necessary to show the complainant railway as a participating carrier in the trunk lines' tariffs.

We have specifically dealt herein only with the rates on carload freight, as that class of traffic constitutes most of the complainant railway's entire freight tonnage. The principles underlying our findings and conclusions with respect to carload traffic apply, however, with equal force to less-than-carload freight.

We desire to make plain herein, as we endeavored to do in our supplemental report, that we are asked in this proceeding to establish these joint rates on the St. Louis basis by affirmative order in a

contested case. We merely say in response to that request that
122 this is something which we can not upon this record do, and that if the trunk lines elect voluntarily to establish joint rates on that basis instead of on the maximum basis herein prescribed, the division thereof which they may lawfully pay and the complainant railway lawfully receive shall not, in view of the common ownership of the complainant railway and Anheuser-Busch Brewing Association stock, be more than is just and reasonable for the service which the complainant railway performs.

This respondent thereupon ordered that the trunk lines and the anufacturers' Railway Co. put in force rates which shall not exceed the trunk lines' rates between St. Louis, Mo., and points in States other than Missouri by more than $2.50 per car, this order, however, leaving the trunk lines and the Manufacturers' Railway Co. free to establish rates on the St. Louis basis, should they so desire.

This respondent states that all of the trunk lines with two exceptions have filed tariffs under said order applying the St. Louis rates on traffic moving in through transportation between points on the line of said Manufacturers Railway Co. and points on the trunk lines in States other than Missouri, and that the Manufacturers' Railway Co. has issued concurrences on that basis.

This respondent further states that it has made no finding as to what the division of the joint rates which it prescribed should
123 be and that the Manufacturers Railway and the trunk lines may agree upon such divisions as they choose, subject only to the qualification that said division must be just and reasonable and not so excessive as to be in effect a rebate to said Anheuser-Busch Brewing Association.

This respondent further states that while it did express an opinion in its report of June 21, 1913, that $2 per car would be reasonable compensation to the Manufacturers' Railway for its service, and did also, in its report of July 10, 1914, modify its former opinion by increasing the amount to $2.50 per car, your respondent did not undertake to fix any amount by definite finding or order for the manifest reason that under section 15 of the act to regulate commerce your respondent was without jurisdiction or authority to fix said divisions unless and until the said Manufacturers' Railway and the said trunk lines, parties to the joint rate prescribed by the respondent, had had opportunity so to do and had disagreed among themselves; and after further hearing as in that section provided.

Respondent further states that it is beyond the competency of the court in advance of a finding by this respondent, Interstate Commerce Commission, to pass upon what would be reasonable divisions.

III.

Answering paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 of the petition herein, this respondent states that the facts are fully set out in the preceding paragraph of this
124 answer, and that respondent denies each statement in said paragraphs of the petition inconsistent with the facts as set

out in paragraph 1 of the answer and in the several reports made by this respondent attached hereto as exhibits to this answer.

IV.

Answering paragraphs 20, 21, 22, 23, and 24, this respondent admits that on June 21, 1911, the respondent filed its first report, as stated in paragraph 1 of this answer. Respondent denies that the Commission found in its first report in manner and form as petitioner alleges, but for the facts found by the Commission the respondent refers to the said report in its entirety. This respondent alleges that the excerpts from said report set out in paragraph 20 of the petition constitute but a small part of the same and should be considered not only in connection with the said report in its entirety, but should also be considered in connection with the second and third reports of the Commission in their entirety.

V.

Answering paragraph 25, respondent admits the same.

VI.

Answering paragraph 26, respondent states that it heard additional evidence upon the second hearing. Respondent alleges that in its second report it modified and changed certain of its findings of fact found in its first report and that it did, to the extent
125 indicated by the reports, modify its conclusions of law applicable to the facts, all of which is more fully set forth in the second and third reports in their entirety, to which reference is hereby made.

VII.

Answering paragraphs 27 and 28, this respondent admits that in said second report it used the language referred to; but this respondent states that the language should be considered not only in connection with the second report in its entirety, but should also be considered in connection with the three reports in their entirety. As to the remaining allegations of paragraph 28, this respondent denies the same and each and every part of the same in manner and form as alleged. This respondent further states that under ordinance No. 22025 of the city of St. Louis, Mo., the Manufacturers' Railway is prohibited from charging more than $2 a car for switching cars in local traffic. This respondent states that the refusal of this respondent to order the trunk lines to make allowances of $4.50 per car to the Manufacturers' Railway as prayed for by said Manufacturers Railway Co. is not subject to review for the reason that said denial of relief is negative and affords no basis for judicial determination without the court assuming the power to direct the Commission as to what order it shall enter and thereby unlawfully usurp the functions of the Commission. This respondent states that the

allegation in the petition that, as a matter of law, this re-
126 spondent erred in refusing to require the trunk lines to absorb the charges of the Manufacturers' Railway Co., does not present any matter for review by this court and that the only matter for consideration by the court is the validity of the order that was made and not the legality of some order or orders that the respondent did not make and refused to make.

VIII.

Answering paragraph 29, respondent admits the language contained in the excerpt from the second report of the Commission. This respondent alleges, however, that the language used should be considered not only in connection with the second report in its entirety, but in connection with the said three reports of the Commission in their entirety.

IX.

Answering paragraph 30, this respondent denies matters and things therein alleged, in manner and form as alleged, and respondent states that the findings of the respondent on the matters and things in said paragraph 30 are fully set out in said third report of the respondent, to which this respondent for accuracy refers.

This respondent states that the refusal of this respondent to order the trunk lines to make allowances to the Manufacturers' Railway, as prayed for by said Manufacturers' Railway Co., is not subject to review, for the reason that such denial of relief is negative and
127 affords no basis for judicial determination. The respondent further states that the allegation in said petition that as a matter of law this respondent erred in refusing to require the trunk lines to absorb the charges of the Manufacturers' Railway Co., does not present any matter for review by this court, and that the only matter for consideration by the court is the validity of the order that was made and not the legality of some order or orders that the respondent did not make, or refused to make.

This respondent alleges that the matters and things set out in paragraph 1 are embraced within the said three reports of the Commission to which this respondent for accuracy refers, and this respondent denies each and every allegation in said paragraph inconsistent with the facts set out in said reports.

X.

Answering paragraph 31, respondent states that the matters and things set out and alleged in said paragraph are embraced within the three reports of this respondent to which this respondent for accuracy refers. Further answering this respondent states that all of the trunk lines entering the city of St. Louis, with two exceptions, have filed tariffs with this respondent fixing rates to points along the line of the Manufacturers Railway at the St. Louis rate.

This respondent states that the absorption of the charges of the

St. Louis Terminal Association by the trunk lines was not by any order of this respondent, but was due to the voluntary action of the trunk lines, and that under the aforesaid order of the Com-
128 mission the trunk lines are not prohibited from making reasonable divisions of the joint rates with the Manufacturers' Railway.

Respondent further states that the matter of divisions has not been passed upon by this respondent and is a matter for further consideration. Respondent alleges, however, that the reasonableness of the allowances and of divisions are matters within the exclusive primary jurisdiction of this respondent, and the court has no jurisdiction to consider what allowances would be reasonable or what divisions just until this respondent has made its order in the premises, and that the order in No. 3151 now under consideration by the court has no relation to allowances or divisions, but merely fixes a maximum joint rate which shall not exceed the St. Louis rate by more than $2.50, leaving the carriers free to establish the St. Louis rate if they so desire, and leaving open the question of divisions for further consideration and determination by this respondent if the necessity for such further consideration shall later arise.

XI.

Answering paragraph 32, respondent admits that upon the filing of the second report of the Commission the Manufacturers Railway, Anheuser-Busch Brewing Association, and others filed with the Commission their several applications for rehearing which were granted, and that on November 13, 1913, said cause was
129 fully heard on brief and oral arguments by this respondent, and that on November 5, 1914, this respondent filed its third report, dated July 10, 1914.

XII.

Answering paragraph 33, this respondent admits:

(*a*) That the Manufacturers Railway is a common carrier, as set out in said report, to which reference is hereby made.

(*b*) This respondent states that the refusal of this respondent to order the trunk lines to make allowances to the Manufacturers Railway as prayed for by said Manufacturers Railway Co. is not subject to review for the reason that its denial of relief is negative and affords no basis for judicial determination.

(*c*) Respondent states that the excerpt from the report of the Commission should be considered not only in connection with the said report in its entirety but in connection with the three reports of the Commission in their entirety.

(*d*) In answer to section (*d*) of paragraph 33 of this petition, this respondent states that neither in its reports nor in its order did it make any definite finding upon the question of divisions, but on the contrary specifically and unqualifiedly reserved for further consideration the question of divisions. Respondent states that by its said order the trunk line carriers are permitted to establish rates to

points along the line of the Manufacturers Railway at the St. Louis rate, should they choose to do so.

(*e*) This respondent states that as to the matter of divis-
130 ions between the trunk lines and the Manufacturers Railway no definite finding was made by the Commission, but same was expressly reserved by the Commission in said reports for further consideration, and that the only matter before this court is the legality of the order of this respondent in No. 3151, whereby the trunk-line carriers are forbidden to charge to and from industries along the line of the Manufacturers Railway more than $2.50 per car above the St. Louis rate.

This respondent states that all of the trunk lines entering the city of St. Louis, with two exceptions, have, under said order, filed rates to points along the line of the Manufacturers Railway at the St. Louis rate, and that the Manufacturers Railway Co. has issued concurrences on that basis.

This respondent further states that what divisions shall be made by said trunk lines to said Manufacturers Railway out of said rates is a matter for future consideration, so far as concerns this respondent, and that the trunk lines and Manufacturers Railway have, so far as this respondent is advised, neither agreed nor disagreed to what said divisions should be.

This respondent further states that the question of the reasonableness of the division to the Manufacturers Railway Co., in the event the carriers disagree as to the reasonableness of divisions, is a matter over which this respondent has exclusive primary jurisdiction and that said divisions and allowances can not be fixed by the court, as the function of the court is limited to determining the legality of the order of this respondent in No. 3151, as aforesaid.

131 (*f*) This respondent states that all of the trunk lines entering the city of St. Louis having, with two exceptions, filed rates under the order in Docket No. 3151 to points along the line of the Manufacturers Railway at the St. Louis rate, the question of divisions to the Manufacturers Railway Co., so far as concerns this defendant, remains to be determined, and that these matters are within the exclusive primary jurisdiction of this respondent and that there has been no order in reference to same. Respondent further states, however, that it has refused to approve as effecting unlawful results, not under section 15 of the act to regulate commerce relating to divisions of joint rates but under other sections of that act prohibiting rebates or concessions by any device whatever, the allowances out of the trunk lines' rates (not divisions of joint rates with the Manufacturers Railway Co.) of $4.50 per car.

(*g*) This respondent denies that the conclusions of this respondent were in conflict with the decree or the decision of the Supreme Court of the United States in the case of United States v. Terminal Railroad Association of St. Louis (224 U. S., 383).

XIII.

Answering paragraph 34, this respondent admits that the order therein set out is the order made by it in Docket No. 3151 and that

on December 7, 1914, the order was modified in the manner described, and respondent states that said order has been extended or modified so as to take effect April 1, 1915.

132 XIV.

Answering paragraph 35 of the petition, this respondent states that the order complained of in No. 3151 as made in the proceeding before this respondent brought by the petitioner, the Manufacturers Railway Co., and that said complainant failed to prove by substantial evidence the allegations of its petition. This respondent denies, to the extent that the findings and conclusions of the Commission involve questions of fact, that there was no substantial evidence to support such findings and conclusions and denies that the Commission erred, as a matter of law, in its conclusions on undisputed facts.

This respondent states that its refusal to grant relief this petitioner prayed for is negative and not subject to review. This respondent further denies that the Commission erred in making its findings and conclusions and in making and issuing said order, and denies that its findings and conclusions were either based upon mistakes of law or without evidence to support them, or that they are contrary to the undisputed evidence, or that they are beyond the constitutional or statutory powers of the Commission, and denies that said order, or the findings of the Commission and conclusions constituting a part thereof, upon which said order was made, were unlawful, and denies that said order or any of said findings and conclusions are in violation or in denial of the rights of petitioner under the Constitution and laws of the United States.

133 I. Respondent denies that the order of the Commission is void to the extent alleged in subdivision I of said paragraph for the reason given.

(*a*) Respondent denies the matters and things alleged in part (*a*) of said subdivision I of said paragraph, and each and every part of the same.

(*b*) Respondent denies the matters and things alleged in part (*b*) of said subdivision I of said paragraph, and each and every part of the same.

(*c*) Respondent denies that said order in docket No. 3151 was confiscatory in that it will deprive the petitioner of its property without due process of law contrary to the provisions of the fifth amendment to the Constitution of the United States.

II. Respondent denies that said order is void as in contravention of the decree of this court and of the Supreme Court of the United States in the case of United States v. Terminal Railroad Association of St. Louis (224 U. S., 383).

(*a*) Respondent denies that the Commission erred in manner and form as alleged in part (*a*) of subdivision II of said paragraph.

(*b*) Respondent denies that the conclusions of the Commission in said part (*b*) of subdivision II of said paragraph were made without substantial evidence to support them and were contrary to the facts before the Commission and denies that said conclusions were

contrary to said decree. Respondent specifically denies anything in said part (*b*) of said subdivision II of the said paragraph to the contrary alleged.

134 (*c*) Respondent denies that the conclusions and order of the Commission were in derogation of the decree in the Terminal Association case. This respondent states that the allegations in part (*c*) of subdivision II alleging that as a matter of law this respondent erred in refusing to require the trunk lines to absorb the charges of the Manufacturers Railway Co. does not present any matter for review by this court, and that the only matter for consideration by the court is the validity of the order that was made and not the legality of some order or orders that the respondent did not make or refused to make.

III. Respondent denies that said order is void to the extent alleged in said subdivision III of said paragraph for the reason given.

(*a*) The allegation that this respondent erred, as a matter of law, in not making an order different from the order that was made presents no questions subject to review by this court. The matter before this court is the legality and validity of the order that was made, and the validity or legality of orders that were not made and that this respondent refused to make are not before this court for determination.

(*b*) This respondent states that said proceeding before this Commission did not present any question of increases in rates under section 15 of the act to regulate commerce as alleged, but was in relation to allowances claimed by said Manufacturers Railway Co. out of the trunk lines' rates, which trunk lines' rates were not changed.

135 IV. Respondent denies the matters and things set out in subdivision IV of said paragraph in manner and form as alleged and each and every part of the same, and denies that said order is void because the Commission erred as a matter of law in refusing to order the trunk lines to make the allowance desired by the Manufacturers Railway Co. This respondent states that the allegation in said petition that as a matter of law this respondent erred in refusing to require the trunk lines to absorb the charges of the Manufacturers Railway Co. does not present any matter for review by this court and that the only matter for consideration by the court is the validity of the order that was made and not the legality of some order or orders that the respondent did not make or refused to make.

V. Respondent denies that it erred as a matter of law in refusing under the facts and circumstances to award reparation to the Manufacturers Railway Co. This respondent states that the allegation in said petition that as a matter of law this respondent erred in refusing to require the trunk lines to absorb the charges of the Manufacturers Railway Co. does not present any matter for review by this court and that the only matter for consideration by the court is the validity of the order that was made and not the legality of some order or orders that the respondent did not make or refused to make.

136

XV.

Answering paragraph 36, this respondent states that said allegations of unlawful conspiracy entered into against the Manufacturers Railway by the trunk lines was made before this respondent and fully considered with the result indicated by the findings of the Commission as set out in its said reports.

Respondent further states that in the hearing before this court no evidence should be received except evidence that was before this respondent.

This respondent further states that with two exceptions the trunk lines entering the city of St. Louis have filed with this respondent tariffs to points along the lines of the Manufacturers Railway at the St. Louis rate and that the matter of allowances and divisions has not yet been passed upon by this respondent. This respondent states that the reasonableness of allowances and the fixing of divisions, if necessary later to be fixed, where the carriers disagree are matters within the exclusive primary jurisdiction of this respondent and are not subject to judicial review until this respondent has acted and made its orders thereon.

XVI.

Answering paragraphs 37 and 38 of the petition, this respondent states that its order does not prohibit the trunk lines from establishing the St. Louis rate to points along the line of the Manufacturers Railway. This respondent states that all of the trunk lines

137 entering the city of St. Louis, with two exceptions, have, under said order, filed tariffs with this respondent to points along the line of the Manufacturers Railway at the St. Louis rate.

This respondent states that the reasonableness of allowances and the fixing of divisions, where the carriers disagree and ask under section 15 of the act to regulate commerce to have the Commission fix divisions, are matters within the exclusive primary jurisdiction of this court and are not subject to review until this respondent has acted and made its orders thereon.

This respondent further states that in so far as said paragraph 37 complains of the refusal of this respondent to make orders that it did not make and in so far as it alleges that as a matter of law this respondent erred in refusing to require the trunk lines to absorb the charges of the Manufacturers Railway Co., it does not present any matter for review by this court, and that the only matter for consideration by the court is the validity of the order that was made and not the legality of some order or orders that the respondent did not make or refused to make.

XVII.

Answering paragraph 39, this respondent denies the matters and things as alleged, and each and every part of the same, with the exception—the effective date of the order of the Interstate Commerce Commission has been by the Commission postponed to Feb-

ruary 15, 1915, and has been further postponed to April 1, 1915.

138 This respondent denies that said order is void or that it can be held void because this respondent refused to order the trunk lines to make allowances desired by the Manufacturers Railway.

This respondent alleges that the only matter before this court is the validity of the order that was made and not the validity or invalidity of orders that were not made and that this respondent refused to make.

Respondent further states that the trunk lines having filed their tariffs under said order for points along the line of the Manufacturers Railway at the St. Louis rate, that the matters of allowances and divisions remain to be determined. Respondent states that it has reserved these matters for further consideration if the necessity for such further consideration shall later arise, and that the reasonableness of allowances and of divisions, where the carriers fail to agree and ask the Commission to fix divisions, are questions within the exclusive primary jurisdiction of this Commission and can not be passed upon by the court until this Commission has acted thereon.

This respondent further states that the matter of divisions is yet to be determined by this respondent and that the reasonableness of divisions, where the carriers fail to agree and petition the Commission to fix divisions under section 15 of the act to regulate commerce, are matters within the exclusive primary jurisdiction of this respondent and beyond the competency of the court to act upon until this respondent has made its orders in the premises.

139 Respondent states that by its petition as appears by the allegations thereof and the prayer thereof the Manufacturers Railway is endeavoring to have this court make orders that this respondent refused to make and to declare void the order that was made because this respondent refused to make a different order, and the petitioner is endeavoring to have this court, in advance of a finding by this respondent, Interstate Commerce Commission, determine the reasonableness of the divisions and allowances and to decide what orders should be made by this respondent, Interstate Commerce Commission, in the premises. The petitioner thereby is attempting to have the court usurp the functions of the respondent, Interstate Commerce Commission, delegated to it by the act to regulate commerce. This respondent alleges that the only matter before this court is the validity of the order that was made and not the validity or invalidity of orders that were not made and that this respondent refused to make.

Further answering, this respondent denies each and every allegation in said petition in so far as it has not heretofore been admitted, denied, or otherwise traversed.

This respondent denies:

1. Any fact or facts alleged in said petition or any part of the same which contradict or seek to contradict any fact or facts found by this respondent in its said reports and orders.

2. Any fact or facts alleged in said petition or any part of the same which are inconsistent with any fact or facts found
140 by this respondent in said reports and orders.

3. Any fact or facts alleged in said petition or any part of the same which set up or which seek to set up matters and things which were not before this respondent.

4. Any conclusions of law alleged in said petition or any part of the same which are inconsistent with any conclusions of law held by this respondent in the said reports and orders, or any facts or inferences alleged in said petition, or any part of the same, which are inconsistent with the findings of this respondent in its said reports and orders, all of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all of the matters and things aforesaid as this respondent would be entitled to if the same were specifically pleaded or set forth by way of demurrer or motion to dismiss the complaint.

Wherefore, having fully answered, this respondent prays that the petition be dismissed at the costs of the petitioner, and for such other and further relief as may be appropriate in the premises.

INTERSTATE COMMERCE COMMISSION,
JOSEPH W. FOLK,
CHARLES W. NEEDHAM,
EDWARD W. HINES
Counsel.

141-206 CITY OF WASHINGTON,
District of Columbia, ss:

I, Judson C. Clements, on oath depose and say that I am a member of the Interstate Commerce Commission and make this affidavit on behalf of said Commission; that I have read the foregoing answer and know the contents thereof, and that the same is true.

JUDSON C. CLEMENTS.

Subscribed and sworn to before me, a notary public within and for the District of Columbia, this 8th day of February, A. D. 1915.

[SEAL.] GEO. B. McGINTY,
Notary Public.

* * * * * * *

207 And afterwards, to-wit on the 11th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

4385.

MANUFACTURERS RAILWAY COMPANY, Complainant,
vs.
UNITED STATES OF AMERICA et al., Defendants.

Now at this day comes Byron F. Babbitt, Esquire, Special Examiner herein, and files in this cause, jointly with cause No. 4384, a transcript of the testimony taken and exhibits thereto.

And afterwards, to-wit on the 12th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

4385.

MANUFACTURERS RAILWAY COMPANY, Complainant,
vs.
UNITED STATES OF AMERICA et al., Defendants.

Now at this day come the parties hereto by their respective solicitors, and the argument of this cause upon the final hearing before their Honors, Circuit Judges Walter H. Sanborn and Elmer B. Adams, and District Judge David P. Dyer, is commenced but not being concluded at the hour of adjournment, the further hearing of the same is postponed until the opening of Court tomorrow morning at Ten o'clock.

208 And thereupon, to-wit on the 12th day of March, 1915, there were filed in said cause Objections of Respondent to the Introduction of Certain Evidence, in words and figures as follows, to-wit:

(Objections of Respondent.)

United States District Court, Eastern District of Missouri, Eastern Division.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASSOCIATION, Intervening Petitioners,
v.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Objections of Respondent to the Introduction of Certain Evidence.

On February 17, 1915, at the hearing before Special Examiner Byron F. Babbitt, the counsel for the petitioner and intervening petitioners offered the record proper, that is, the pleadings, decrees,

and also the mandates of the Supreme Court of the United States in the case of The United States of America, Complainant v. The Terminal Railroad Association of St. Louis, et al., defendants, and certain portions of said record, have been abstracted and filed by the petitioner and the intervening petitioners.

At the time of offering such record it was stipulated that counsel for the Government may file his objections before or at the time of the argument.

To the said offer the counsel for the Government now enters the following objections to constitute a part of the record of the cause:

209 First. The Terminal Railroad Association case arose under the Sherman Anti-Trust Act. The instant case arose under the Act to Regulate Commerce. The subject-matter of the litigation and the parties to the litigation were not and are not the same in the two cases but are widely different both as to subject-matter of litigation and parties and the two cases have no relation to each other.

Second. No question of estoppel and no question of res adjudicata can be raised against the Government in the instant case arising under the Interstate Commerce Act by reason of anything which occurred in the Terminal Railroad Association Case arising under the Sherman Anti-Trust Act.

Third. Under the allegations of the petition, the Court is without jurisdiction to hear and determine any case or issue now sought to be made under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890.

Fourth. The Interstate Commerce Commission declined to make findings on the evidence and argument before it on the charge that the Terminal Railroad Association was a combination and conspiracy in violation of the Sherman Anti-Trust Act. On the contrary, the Interstate Commerce Commission found that it had no jurisdiction or authority to make any such finding.

Fifth. The said record and every part thereof is incompetent, irrelevant, and immaterial to any question bearing on the validity or invalidity of the order of the Interstate Commerce Commission, and the paragraphs of the petition relating to the Terminal Railroad Association and each of them should be stricken out.

210 And thereupon, to-wit on the 12th day of March, 1915, there were filed in said cause Objections of Respondent to the Introduction of Certain Evidence, in words and figures as follows, to-wit:

(Objections of Respondent.)

United States District Court, Eastern District of Missouri, Eastern Division.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASSOCIATION, Intervening Petitioners,
v.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Objections of Respondent to the Introduction of Certain Evidence.

On March 12th, 1915, at the hearing before the Court the petitioner and intervening petitioners offered the record proper, that is, the pleadings, decrees, and also the mandates of the Supreme Court of the United States in the case of The United States of America, Complainant v. The Terminal Railroad Association of St. Louis, et al., defendants, and certain portions of said record, have been abstracted and filed by the petitioner and the intervening petitioners.

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Second. No question of estoppel and no question of res adjudicata can be raised against the Government in the instant case arising under the Interstate Commerce Act by reason of anything which occurred in the Terminal Railroad Association Case arising under the Sherman Anti-Trust Act.

Third. Under the allegations of the petition, the Court is without jurisdiction to hear and determine any case or issue now sought to be made under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890.

Fourth. The Interstate Commerce Commission declined to make findings on the evidence and argument before it on the charge that the Terminal Railroad Association was a combination and conspiracy in violation of the Sherman Anti-Trust Act. On the con-

trary, the Interstate Commerce Commission found that it had no jurisdiction or authority to make any such finding.

Fifth. The said record and every part thereof is incompetent, irrelevant, and immaterial to any question bearing on the validity or invalidity of the order of the Interstate Commerce Commission, and the paragraphs of the petition relating to the Terminal Railroad Association and each of them should be stricken out.

212 And afterwards, to-wit on the 13th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

4385.

MANUFACTURERS RAILWAY COMPANY, Complainant,
vs.
UNITED STATES OF AMERICA et al., Defendants.

Now at this day come again the parties hereto by their respective solicitors, and this cause is now further argued before and finally submitted to the Court.

213 And afterwards, to-wit on the 16th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(Order.)

In the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4384.

MANUFACTURERS' RAILWAY COMPANY et al., Complainants,
vs.
UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Complainant,
vs.
UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, Intervenor.

The Court having fully considered the application of Byron F. Babbitt, Esq., for an allowance for his services as Special Examiner in the above-entitled causes, doth

Order that said Examiner be and he is hereby allowed the sum of One Hundred and Fifty Dollars for his services, and that Misses L. M. Eagan and M. J. Cook be and they are hereby allowed the sum of Two Hundred Fifty-six Dollars Eighty Cents, being the amount of the bill presented by them for their services in reporting

and transcribing the testimony taken before said Examiner; that both said amounts be apportioned equally between the two causes, and be taxed as costs against complainants at whose instance said proofs were taken.

WALTER H. SANBORN,
ELMER B. ADAMS,
Circuit Judges.
DAVID P. DYER,
District Judge.

March 16th, 1915.

214 And afterwards, to-wit on the 26th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(*Order.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, a Corporation, Complainant,
vs.
UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

The bill of complaint in this cause, containing a prayer for injunction to suspend the operation of an order of the Interstate Commerce Commission, having been filed before and presented to the undersigned on December 14th, 1914, and the said cause having come on for hearing upon such application for injunction and upon final hearing, the undersigned did call to his assistance upon said hearing on March 12th and 13th, 1915, the Honorable Walter H. Sanborn, United States Circuit Judge for the Eighth Circuit, and the Honorable David P. Dyer, United States District Judge for the Eastern District of Missouri, as required by the Act of Congress in such cases.

It is accordingly ordered that this record of the same be entered nunc pro tunc as of the first day of such hearing, namely, March 12th, 1915.

March 26th, 1915.
(Signed) ELMER B. ADAMS,
Circuit Judge.

And afterwards, to-wit on said 26th day of March, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(*Order.*)

215 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, a Corporation, Complainant,
vs.
UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

This cause having come on to be heard at the September Term 1914 of this District Court, and having been argued by counsel for the respective parties and submitted to the Court on March 13th, 1915, upon the pleadings and proofs adduced; the Court being now fully advised in the premises doth order, adjudge and decree that the bill of complaint in this cause be and the same is hereby dismissed, at the costs of the said complainant, for which costs let execution issue.

March 26th, 1915.

(Signed) ELMER B. ADAMS,
Circuit Judge.

(Signed) DAVID P. DYER,
District Judge.

Sanborn, Circuit Judge, dissents.

And afterwards, to-wit on the 10th day of May, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(*Order.*)

In the District Court of the United States, Eastern District of Missouri, Eastern Division.

216 In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASSOCIATION et al., Intervening Petitioners,
v.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

(Order.)

On motion of counsel, due notice having been given, it is ordered: That the answer of the United States filed to the original petition in the above-entitled cause shall also stand as the answer of the United States to the intervening petition filed herein by the intervening petitioners;

That the answer of the Interstate Commerce Commission filed to the original petition in the above-entitled cause shall also stand as the answer of the Interstate Commerce Commission to the intervening petition filed herein by the intervening petitioners.

Entered nunc pro tunc.

March 12, 1915.

ELMER B. ADAMS,
Circuit Judge.
DAVID P. DYER,
District Judge.

And afterwards, to-wit on the 12th day of May, 1915, there was filed in said cause, Petition for Appeal, in words and figures as follows, to-wit:

(*Petition for Appeal.*)

In the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri.

217 In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASS'N et al., Intervening Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Petition for Appeal.

To the Honorable Judges of said Court:

Your petitioners, Manufacturers Railway Company, a corporation, petitioner in above case, and Anheuser-Busch Brewing Association, Louis Obert Brewing Company, The Independent Breweries Company, Otto F. Stifel's Union Brewing Company, Griesedieck Bros.' Brewery Company, Ganahl Lumber Company, St. Louis Lumber Company, St. Louis Cooperage Company, Stecher Cooperage Works, Western Foundary and Sash Weight Company, Independent Lumber Company, Henry Quelmalz Lumber and Manufacturing Company, B. Klauber's Sons Junk Company, A. Klauber's Sons' Iron and Metal Company, Standard Furniture Manufacturing Company, G. Gramer Dry Plate Company, Hammer Dry Plate Company, John Notter Boiler Works Company, J. H. Belz Provision Company, St. Louis Basket and Box Company, and Christopher & Simpson Iron Works Company, intervening petitioners in said cause, conceiving themselves aggrieved by the final decree of this Court made and entered in this cause on the 26th day of March, A. D. 1915, do hereby appeal from said decree to the United States Supreme Court, for the reasons specified in the assignment of errors which is filed herewith.

Wherefore, your petitioners pray for an order that said appeal

may be allowed, and that citation issue as provided by law, and that such portions of the original record, papers and exhibits in this Court, be transmitted to the Supreme Court of the United States, instead of a transcript thereof, and that a transcript of such other portions of the record and proceedings here be transmitted to said Supreme Court, as appellants have designated respectively
218 in their praecipe for appeal filed herein with this petition for appeal.

SIDNEY F. ANDREWS,
Solicitor for Petitioner, Manufacturers Railway Company.
NAGEL & KIRBY,
Solicitor for Intervening Petitioners, Shippers.

And thereupon, to-wit on the 12th day of May, 1915, the following proceedings were had and appear of record in said cause, as follows, to-wit:

(Order Granting Appeal.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASS'N et al., Intervening Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Order Granting Appeal.

The above-named petitioner, Manufacturers' Railway Company, a corporation and the following intervening petitioners, Anheuser-Busch Brewing Association, Louis Obert Brewing Company, The Independent Breweries Company, Otto F. Stifel's Union Brewing Company, Griesedieck Bros'. Brewing Company, Ganahal Lumber Company, St. Louis Lumber Company, St. Louis Cooperage Company, Stecher Cooperage Works, Western Foundry and Sash Weight Company, Independent Lumber Company, Henry Quelmalz Lumber and Manufacturing Company, B. Klaubers' Sons' Junk Company, A. Klaubers' Sons' Iron and Metal Company, Standard Furniture Manufacturing Company, G. Cramer Dry Plate Company, Hammer Dry Plate Company, John Notter Boiler Works Company, J. H. Belz Provision Company, St. Louis Basket and Box Company, and Christopher & Simpson Iron Works Company,
219 pray and appeal from the decree rendered by this Court in the above entitled cause on the 26th day of March, A. D. 1915, to the Supreme Court of the United States; and said petitioners having filed with the Clerk of this Court their petition for appeal,

together with an assignment of errors, and an appeal bond, which bond has been duly approved by the Court.

It is ordered, adjudged and decreed by the Court that said appeal be granted and allowed and that the Clerk of this Court transmit to the Supreme Court of the United States such portions of the original record papers and exhibits in this Court, instead of a transcript thereof, together with a transcript of such other portions of the record and proceedings herein, as appellants have designated in their præcipe for appeal filed herein.

The foregoing is hereby approved for entry this 12 day of May, A. D. 1915.

(Signed) ELMER B. ADAMS,
Circuit Judge.

Which said Assignment of Errors and Appeal Bond are respectively in words and figures, as follows, to-wit:

(*Assignment of Errors.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASS'N et al., Intervening Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Assignment of Errors.

220 And now, on this, the 12th day of May, A. D. Nineteen Hundred and Fifteen, come the petitioner and the intervening petitioners, and file the following Assignment of Errors upon which they and each of them will rely upon their prosecution of their appeal from the decree made by this honorable Court on the 26th day of March, A. D. Nineteen Hundred and Fifteen, in the above entitled cause.

1.

That the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, erred in dismissing the said suit, and in entering a final decree in favor of the said respondents, United States of America and Interstate Commerce Commission for their costs against petitioner and intervening petitioners.

2.

That said Court erred in not holding that the Act to Regulate Commerce required the trunk line carriers to prove the reasonable-

ness of the advanced rates to St. Louis (which became effective upon the cancellation of the trunk lines' tariffs absorbing the switching charges of the Manufacturers Railway) and that it was error for the Commission to assume the reasonableness of said advanced rates, and therefore the order of the Commission based thereon was arbitrary and contrary to law and should have been set aside.

3.

That said Court erred in not holding, that in the absence of proof of the reasonableness of the advanced rates (to points on the Manufacturers Railway and to St. Louis), established by the cancellation of the trunk lines' tariffs absorbing the switching charges of
221 the Manufacturers Railway, the Commission should have ordered said trunk lines to restore their former tariffs and continue the application of the St. Louis rates to points on said Railway, and that the order of the Commission as made, was therefore arbitrary, and unlawful.

4.

That said Court erred in not holding, that the maximum rate of $2.50 per car in excess of the St. Louis rates to points on the Manufacturers Railway, as prescribed in said Order of the Commission, was unreasonable per se and discriminatory, and that said Order was therefore arbitrary, unlawful and void.

5.

That said Court erred in not holding, that the order of the Commission was void to the extent that it permits or requires the trunk lines to charge, collect or receive, rates in excess of the St. Louis rates on interstate traffic moving to or from points on the lines of the Manufacturers Railway.

6.

That said Court erred in not holding, that the Commission had acted arbitrarily and contrary to law, in basing its order upon the erroneous legal conclusion that it did not have the power upon the record before it, to compel the trunk lines to extend their services to shippers on the lines of the Manufacturers Railway, at the St. Louis rates.

7.

That said Court erred in not holding, that the Commission had acted arbitrarily and contrary to law, in basing its order upon the erroneous legal conclusion that the Commission did not have power upon the record before it to compel the trunk lines to apply the St. Louis rates to points on the lines of the Manufacturers Railway, and that consequently the privilege to shippers on the lines of said Railway, of enjoying the St. Louis rates (without any addition thereto)

was not a matter of right, but was merely one of grace to be
222 extended or denied by the trunk lines at their volition, although the trunk lines were permitted by said order contemporaneously to apply the St. Louis rates to all other shipping points in the City of St. Louis, located on the lines of every other terminal carrier rendering terminal transportation services in St. Louis.

8.

That said Court erred in not holding, that the order of the Commission was void in requiring the Manufacturers Railway Company to join the trunk lines in the establishment of rates on interstate traffic to points on its lines, in excess of the St. Louis rates.

9.

That said Court erred in not holding, that the Order of the Commission in permitting the trunk lines to absorb the switching charges of the St. Louis Terminal Railroad Association and of its subsidiary and proprietary lines, for the moving of traffic to or from points within the switching limits of St. Louis, and in not requiring said trunk lines contemporaneously to absorb the reasonable switching charges of the Manufacturers Railway Company for performing a like service for said trunk lines within said switching limits, was unlawful and in violation of Section Three of the Act to Regulate Commerce.

10.

That said Court erred in not holding, that the Order of the Commission, in establishing a maximum rate higher than the St. Louis rate, to points on the lines of the Manufacturers Railway, was unlawful in that it gave an undue or unreasonable preference or advantage to shippers located on other lines of railway within the City of St. Louis, and subjected the shippers located on the lines of the Manufacturers Railway to undue or unreasonable prejudice or disadvantage, in violation of Section Three of the Act to Regu-
223 late Commerce.

11.

That the Court erred in not holding, that the Commission acted arbitrarily, and without substantial proof thereof, and contrary to law, and contrary to the law applicable to the very facts found by the Commission, in concluding that the action of the trunk lines in refusing to apply the St. Louis rates to points on the Manufacturers Railway while contemporaneously applying such rates to all other shipping points within the switching limits of St. Louis, was not discriminatory against said Railway, its shippers or the locality in which said Railway operates, and said Court erred in not holding that the order of the Commission, based upon said erroneous conclusion, was arbitrary, unlawful, and void.

12.

That said Court erred in not holding, that the Commission erred as a matter of law, and acted arbitrarily and unlawfully in basing its Order upon its erroneous holding that the decree of the District Court of the United States, for the Eastern Division of the Eastern District of Missouri, and the decision of this Court, in the case of the United States vs. Terminal Railroad Association, of St. Louis, (224 U. S. 383) did not require the said Commission to treat said Terminal Association and its operating subsidiaries as terminal carriers competing with the Manufacturers Railway in performing terminal switching in St. Louis.

13.

That said Court erred in not holding, that the Commission had acted arbitrarily and contrary to law, in basing its order upon the erroneous legal conclusion that the terminal facilities in St. Louis, of each of the several trunk lines which render terminal transportation services in St. Louis in connection with other trunk lines having the line haul, should be treated as extensions into St. Louis of the rails of each and all of said trunk lines having the line haul, instead of being treated as separate terminal carriers competing (in respect of terminal transportation services) with the Manu-
224 facturers Railway, with the Terminal Railroad Association and its operating subsidiaries, and with each of the other trunk lines performing terminal switching in St. Louis.

14.

That said Court erred in not holding, that the Commission erred as a matter of law and acted arbitrarily in holding that under no circumstances is a carrier entitled to reparation and in denying a hearing on the claim of the Manufacturers Railway Company for reparation, and in ignoring the prayer of the complaining shippers for reparation.

In order that the foregoing Assignment of Errors may be and appear of record, the petitioner and intervening petitioners present the same to the Court, and pray that such disposition be made thereof as in accordance with law and the Statutes of the United States in such cases made and provided, and petitioners pray a reversal of the decretal order and decree of dismissal made and entered by said Court, and that the said Court be instructed to enter such decree as is prayed for by said bill.

SIDNEY F. ANDREWS,
Solicitor for Petitioner, Manufacturers Railway Company.
NAGEL & KIRBY,
Solicitors for Intervening Petitioners, Shippers.

(*Appeal Bond.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASS'N et al., Intervening Petitioner-,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

225 Appeal Bond.

Know all men by these presents, that we, Manufacturers Railway Company, a corporation, and Anheuser-Busch Brewing Association, Louis Obert Brewing Company, The Independent Breweries Company, Otto F. Stifel's Union Brewing Company, Griesedieck Bros.' Brewery Company, Ganahl Lumber Company, St. Louis Lumber Company, St. Louis Cooperage Company, Stecher Cooperage Works, Western Foundry and Sash Weight Company, Independent Lumber Company, Henry Quelmalz Lumber and Manufacturing Company, B. Klauber's Sons' Junk Company, A. Klauber's Sons' Iron and Metal Company, Standard Furniture Manufacturing Company, G. Cramer Dry Plate Company, Hammer Dry Plate Company, John Notter Boiler Works Company, J. H. Belz Provision Company, St. Louis Basket and Box Company, and Christopher & Simpson Iron Works Company, as principals, and August A. Busch as surety, are held and firmly bound unto the United States of America and the Interstate Commerce Commission for the benefit of whom it may concern, in the sum of Five Hundred Dollars to be paid to the said United States of America and the Interstate Commerce Commission for the benefit of whom it may concern, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our *seals* and dated this 11th day of May, A. D. 1915.

Whereas, the above named Manufacturers Railway Company, Anheuser-Busch Brewing Association, Louis Obert Brewing Company, The Independent Breweries Company, Otto F. Stifel's Union Brewing Company, Griesedieck Bros.' Brewery Company Ganahal Lumber Company, St. Louis Lumber Company, St. Louis Cooperage Company, Stecher Cooperage Works, Western Foundry and Sash Weight Company, Independent Lumber Company, Henry
226 Quelmalz Lumber and Manufacturing Company, B. Klauber's Sons Junk Company, A. Klauber's Sons' Iron Metal Company, Standard Furniture Manufacturing Company, G. Cramer Dry Plate Company, Hammer Dry Plate Company, John Notter

Boiler Works Company, J. H. Belz Provision Company, St. Louis Basket and Box Company, and Christopher & Simpson Iron Works Company, have obtained an appeal to the Supreme Court of the United States, in the above entitled cause on the — day of —, A. D. 1915.

Now, therefore, the condition of this obligation is such, that if the above named Manufacturers Railway Company, Anheuser-Busch Brewing Association, Louis Obert Brewing Company, The Independent Breweries Company, Otto F. Stifel's Union Brewing Company, Griesedieck Bros'. Brewery Company, Ganahl Lumber Company, St. Louis Lumber Company, St. Louis Cooperage Company, Stecher Cooperage Works, Western Foundry and Sash Weight Company, Independent Lumber Company, Henry Quelmalz Lumber and Manufacturing Company, B. Klauber's Sons' Junk Company, A. Klauber's Sons' Iron and Metal Company, Standard Furniture Manufacturing Company, G. Cramer Dry Plate Company, Hammer Dry Plate Company, John Notter Boiler Works Company, J. H. Belz Provision Company, St. Louis Basket and Box Company, and Christopher & Simpson Iron Works Company, shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

MANUFACTURERS RAILWAY COMPANY, [SEAL.]

[SEAL.] By G. F. MOORE.

Attest:

PHILIP MARSH,
Acting Secretary.

227 ANHEUSER-BUSCH BREWING ASSOCIATION, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
LOUIS OBERT BREWING COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
THE INDEPENDENT BREWERIES COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
OTTO F. STIFEL'S UNION BREWING COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
GRIESEDIECK BROS.' BREWERY COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
GANAHL LUMBER COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
ST. LOUIS LUMBER COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
ST. LOUIS COOPERAGE COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
STECHER COOPERAGE WORKS, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*

WESTERN FOUNDRY AND SASH WEIGHT CO., [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
INDEPENDENT LUMBER COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
HENRY QUELMALZ LUMBER AND MANUFACTURING COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
B. KLAUBER'S SONS' JUNK COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
A. KLAUBER'S SONS IRON AND METAL COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
STANDARD FURNITURE MANUFACTURING COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
G. CRAMER DRY PLATE COMPANY, [SEAL.]
228
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
HAMMER DRY PLATE COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
JOHN NOTTER BOILER WORKS COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
J. H. BELZ PROVISION COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
ST. LOUIS BASKET AND BOX COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
CHRISTOPHER & SIMPSON IRON WORKS COMPANY, [SEAL.]
By DANIEL N. KIRBY, *Counsel and Attorney in fact.*
AUG. A. BUSCH, *Surety.* [SEAL.]

Approved this 12th day of May, A. D., 1915.

And Afterwards, to-wit on said 12th day of May, 1915 there was filed in said cause, Election and Praecipe for Transcript in words and figures, as follows, to-wit:

(*Election and Præcipe for Transcript.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4385.

MANUFACTURERS' RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASS'N et al., Intervening Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Election and Præcipe for Transcript.

229 To the Clerk of the Above Entitled Court:

You will please prepare a written transcript, duly certified by you of the record in this cause, to be filed together with certain portions of the original record herein, in the office of the Clerk of the United States Supreme Court, under the appeal heretofore perfected to said Court, and include in said transcript and with it send to said Clerk the following pleadings, proceedings, and papers on file, to-wit:

1. The original citation issued herein requiring the respondents to appear in the Supreme Court of the United States on this appeal, and proof of service thereof.

2. The following portions, duly certified by you, of the record herein, viz:

(*a*) Send a transcript of the original printed petition of the Manufacturers' Railway Company against the United States of America filed in this Court:

(*b*) Send a transcript of the original printed petition of intervention filed in this Court on behalf of certain shippers using the lines of said Manufacturers' Railway;

(*c*) Send a transcript of the original printed answers (and amended answers if any) of the United States of America, and of the Interstate Commerce Commission, Intervening Respondent, filed in this Court;

(*d*) A transcript of all orders and decrees made in this case.

(*e*) A transcript of the petition for appeal, order of the Court granting such appeal, and of the appeal allowed, the assignment of errors of the petitioner and intervening petitioners upon this appeal, the undertaking on appeal, and all orders of the Court and of the Judge in Chambers relating thereto.

3. The original typewritten transcript of evidence (four volumes), introduced before the Interstate Commerce Commission, with
230 all exhibits thereto, filed in this Court, together with one copy (each) of the two "Abstracts" thereof before the Commission, which were filed in this Court.

4. The original condensed statement (filed herein by appellants and approved by the Court) of the evidence in this case, (other

than that introduced before the Interstate Commerce Commission, which is called for under "3" last above), said condensed statement being a copy of the printed "Abstract of Evidence and proceedings before Byron F. Babbitt, Esq., Special Examiner," filed in this Court and cause.

5. A transcript of all objections to the introduction of any evidence, made herein by any party.

6. The certificate of the Clerk to the correctness of the record on appeal in this case, and to the correctness of the original papers herein requested to be transmitted, as a part of said record.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Supreme Court and on file in the office of the Clerk of the said Supreme Court of the United States at Washington, D. C., before —— —, 1915.

April 30, 1915.

SIDNEY F. ANDREWS,
Solicitor for Appellant, Manufacturers' Railway Company.
NAGEL & KIRBY,
Solicitors for Co-Appellants Intervening Petitioners, Shippers.

Service acknowledged — ten days' notice waived.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

Service acknowledged — ten days' notice waived.
JOS. W. FOLK,
Counsel for Interstate Commerce Commission.

231 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings, in cause No. 4385, of Manufacturers Railway Company, et al., Complainants, versus United States of America, et al., Defendants, together with all things of and concerning the same as fully as the same remains on file and of record in said cause in my office, save as restricted by the præcipe for transcript hereinbefore set forth and save that certain original files constituting a part of said record, as called for by and described in said præcipe for transcript are separately transmitted, by authority of order granting appeal and under appropriate certificates, to the Supreme Court of the United States and are, by this reference, incorporated herewith as a part hereof; and that the original citation is hereto attached and herewith returned.

In Witness Whereof, I hereunto set my hand and affix the seal

of said District Court, at office, in the City of St. Louis, in said Division of said District, this 25th day of May, A. D. 1915.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL,
Clerk of said District Court.

[Revenue stamp, ten cents.]

232 Original.

In the Supreme Court of the United States, October Term, 1915.

No. 488.

MANUFACTURERS RAILWAY COMPANY, Appellant, and ANHEUSER-BUSCH BREWING ASSOCIATION et al., Intervening Appellants.

v.

UNITED STATES OF AMERICA, Appellee, and INTERSTATE COMMERCE COMMISSION, Intervening Appellee.

Stipulation for Printing Record.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective counsel, that the clerk shall print the following matter to constitute the printed record for the hearing of the appeal in the above-entitled cause:

1. Citation on appeal.
2. Petition for injunction.
3. Petition for intervention.
4. Answer of the United States.
5. Order appointing Byron F. Babbitt, Esq., special examiner.
6. Answer of the Interstate Commerce Commission.
7. Objections of the United States to evidence.
8. Abstract of evidence with exhibits taken before Byron F. Babbitt, Esq., special examiner, commencing February 17, 1915 (consisting of a single printed volume bound in gray cover, 131 pages), together with the typewritten portion of "Appellants' Condensed Statement" to which a copy of said printed abstract is attached.

233 9. The abstract of evidence with exhibits referred to in Item 9 of the stipulation for printing the record in No. 487 should constitute a part of the printed record in this case. In order to reduce the size of the record, and for convenience, the Clerk need not reprint the same in this case, but the parties, their counsel, and the Court may refer to the abstract of evidence and exhibits as printed in No. 487 to the same extent, and for the same purposes as if the same were reprinted herein.

10. The abstract of evidence with exhibits referred to in Item 10 of the stipulation for printing the record in No. 487 should constitute a part of the printed record in this case. In order to reduce the size of the record, and for convenience, the Clerk need not reprint the same in this case, but the parties, their counsel, and the Court may refer to the abstract of evidence and exhibits as printed in No. 487 to the same extent, and for the same purposes, as if the same were reprinted herein.

11. The exhibits referred to in Item 11 of the stipulation for printing the record in No. 487 should constitute a part of the printed record in this case. In order to reduce the size of the record, and for convenience, the Clerk need not reprint the same in this case, but the parties, their counsel and the Court may refer to the said exhibits as printed in No. 487 to the same extent and for the same purposes as if the same were reprinted herein.

12. The three reports referred to in Item 12 of the stipulation for printing the record in No. 487 should constitute a part of the printed record in this case. In order to reduce the size of the record, and for convenience, the Clerk need not reprint the same in this
234 case, but the parties, their counsel and the Court may refer to the said reports and to each of them, as printed in No. 487, to the same extent, and for the same purposes, as if the same were reprinted herein.

13. All orders and journal entries relating to the proceedings in this cause.

14. Final decree.

15. Petition for appeal.

16. Assignment of errors.

17. Order allowing appeal.

18. Bond.

19. Election and præcipe for transcript of record.

20. Clerk's certificate.

21. The map referred — in Item 21 of the stipulation for printing the record in No. 487 should constitute a part of the printed record in this case. In order to reduce the size of the record, and for convenience, the Clerk need not reprint the same in this case, but the parties, their counsel, and the Court may refer to said map as printed in No. 487 to the same extent, and for the same purposes as if the same were reprinted herein.

22. The Clerk shall not print the four volumes constituting the entire record in typewriting of the evidence and proceedings before the Interstate Commerce Commission, but the Court or any party shall have the right to refer to the said entire record or any part of the same. If, however, any party does refer to any part of that record, such party shall specifically designate and print as a part of, or as an appendix to, his brief such part or parts of such record as he desires the court to examine and consider.

235 October 28th, 1915.

SIDNEY F. ANDREWS,
Solicitor for Manufacturers Railway Company, Appellant.

CHARLES NAGEL,
DANIEL N. KIRBY,
Solicitors for Anheuser-Busch Brewing Association, and Others, Intervening Appellants.

JNO. W. DAVIS,
Solicitor General for the United States, Appellee.

JOS. W. FOLK,
Counsel for the Interstate Commerce Commission, Intervening Appellee.

236 & 237 [Endorsed:] File No. 24,762. Supreme Court U. S., October term, 1915. Term No. 488. Manufacturers Railway Co. et al., Appellants, vs. The United States et al. Stipulation as to printing record. Filed November 8, 1915, 191–.

238 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4385.

MANUFACTURERS RAILWAY COMPANY, Petitioner; ANHEUSER-BUSCH BREWING ASS'N et al., Intervening Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Appellants' Condensed Statement of a Portion of the Evidence as Herein Shown for Purpose of Appeal Herein, under Equity Rule 75.

Now come Manufacturers Railway Company, and also the Intervening Petitioners herein, and pursuant to Equity Rule 75, in respect of the Record on Appeal, file this as their condensed statement of such portions of the evidence as are not to be set forth in full, for the purpose of their record upon appeal to the Supreme Court of the United States, in said cause, viz:

1. The attached printed Abstract of Evidence and Proceedings before Byron F. Babbitt, Esq., Special Examiner, (which is made part hereof) consists of a statement in condensed form of all the evidence introduced in this Court in this cause, except the evidence introduced before the Interstate Commerce Commission, which last named evidence, is called for in said Abstract and

239 is covered by point "2" hereof, and except the reports or opinions and order of said Commission, which are also called for in said Abstract.

2. Said evidence before the Commission is not stated in condensed form for the purpose of this appeal, because appellants have contended in this cause, and will contend on appeal, that there was no substantial evidence before the Commission to sustain certain of the conclusions, and Counsel therefore deem it necessary that said evidence before the Commission be set forth in full, by transmitting the original transcript thereof, together with a copy of the Abstracts thereof, which were filed with said Commission.

3. Said Reports, Opinions, and Order of said Commission, are not set forth herein, being contained in full in the answer herein of said Commission, and therefore a part of the Record proper herein.

SIDNEY F. ANDREWS,
Solicitor for Appellant Manufacturers Railway Company.
NAGEL & KIRBY,
Solicitors for Appellants, Intervening Shippers.

Approved.
ELMER B. ADAMS,
Circuit Judge.

Service acknowledged. Ten days' notice waived. No objections to condensed statement referred to and no amendments to propose.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
JOSEPH W. FOLK,
Counsel, Interstate Commerce Commission,
By ARTHUR L. OLIVER,
U. S. Attorney.

May 11th, 1915.

240 [Endorsed:] No. 4385. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. Manufacturers Ry. Co. et al. against United States. Lodged with Clerk May 11, 1915. W. W. Nall, Clerk. Filed May 12, 1915. W. W. Nall, Clerk.

I, W. W. Nall, Clerk of the United States District Court for Eastern Division of Eastern Judicial District of Missouri, hereby certify that the exhibit hereto attached is the original Condensed Statement of a portion of the Evidence, under equity Rule 75, filed in cause No. 4385, Manufacturers Railway Company, et al., versus United States of America, et al., in said Court, which (under order of the District Court) is transmitted to the Clerk of the Supreme Court as a part of the transcript and record upon appeal in said cause certified as of this date.

Witness my hand and the seal of said Court, this 25th day of May, A. D. 1915.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL, *Clerk.*

[Revenue stamp, ten cents.]

IN THE

District Court of the United States.

IN AND FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF MISSOURI.

MANUFACTURERS RAILWAY COMPANY,
Petitioner,
ANHEUSER-BUSCH BREWING ASS'N, ET AL.,
Intervening Petitioners,
vs.
THE UNITED STATES OF AMERICA,
Respondent,
INTERSTATE COMMERCE COMMISSION,
Intervening Respondent.
} No. 4,385.

ABSTRACT OF EVIDENCE, AND PROCEEDINGS BEFORE BYRON F. BABBITT, ESQ., SPECIAL EXAMINER.

Pursuant to his appointment, Byron F. Babbitt, Esq., Special Examiner, proceeded on the 17th day of February, 1915, to take such evidence as might be offered by any of the parties to the above entitled cause.

Appearances:

Sidney F. Andrews, Esq., on behalf of Manufacturers Railway Company, Petitioner;

Daniel N. Kirby, Esq., on behalf of Intervening Petitioners, Shippers;

Honorable Joseph W. Folk, Chief Counsel, on behalf of Interstate Commerce Commission; and

Blackburn Esterline, Esq., Special Assistant Attorney General, on behalf of the United States.

Counsel for petitioners offered the entire record before the Interstate Commerce Commission, including the petition or complaint, the answers, and all the evidence introduced before the Commission; the three reports of the Commission, and the order made in its Docket, No. 3151, in the case of Manufacturers Railway Company, et al., vs. St. Louis, Iron Mountain & Southern Railway Company, et al. The complaint in said cause before the Interstate Commerce Commission is as follows:

Before the Interstate Commerce Commission.

MANUFACTURERS RAILWAY COMPANY, ANHEUSER-BUSCH BREWING ASSOCIATION, STECHER COOPERAGE WORKS, INDEPENDENT BREWERIES COMPANY, BRADBURY MARBLE COMPANY, ST. LOUIS BASKET & BOX COMPANY, FIDEL GANAHL LUMBER COMPANY, ST. LOUIS COOPERAGE COMPANY, and WESTERN FOUNDRY AND SASH WEIGHT COMPANY, corporations,

Complainants,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE MISSOURI PACIFIC RAILWAY COMPANY, THE WABASH RAILROAD COMPANY, MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, THE CHICAGO & ALTON RAILROAD COMPANY, CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, MOBILE & OHIO RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, VANDALIA RAILROAD COMPANY, TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY, CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS, corporations, and JOHN C. RAMSEY and HENRY M. MERRIAM, receivers of said CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS,

Defendants.

Complaint.

(1) The petition of the above named complainants respectfully shows that the complainant, Manufacturers Railway Company, is a corporation organized under and by virtue of the statutes of the State of Missouri.

(2) That the complainants, Anheuser-Busch Brewing Association, Stecher Cooperage Works, Independent Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel Ganahl Lumber Company, St. Louis Cooperage Company, and Western Foundry and Sash Weight Company, are corporations organized and existing under and by virtue of the laws of the State of Missouri, and are citizens of said state, and are each and all of them manufacturing or mercantile corporations engaged in business in the City of St. Louis, State of Missouri, and are each and all located upon and along the lines of railroad of the said complainant, Manufacturers Railway Company, and are shippers and receivers of freight moving over its said lines, in interstate commerce with other states and territories of the United States and foreign nations.

(3) That each of the defendants above named is a railroad company duly organized and is a common carrier of freight from one of the states or territories of the United States or from the District of Columbia to one or more other states or territories of the United States or the District of Columbia, or from one place in the United States to an adjacent foreign country, or from a place in the United States through a foreign country to another place in the United States, or are engaged in transporting in like manner property shipped from a place in the United States to a foreign country and carried from such place to a port of transhipment or from a foreign country to a place in the United States and carried to such a place from a port of entry either in the United States or an adjacent foreign country, and as such common carriers are each and all of them subject to the provisions of

the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplemental thereto.

(4) That in addition to the said complainants other than the said Manufacturers Railway Company there are many other business corporations or industries engaged in the shipment of goods and merchandise in interstate commerce, located upon and along the lines of the said Manufacturers Railway Company which are shippers and receivers of freight transported over said lines of railway, and many of which are dependent solely upon said Manufacturers Railway Company for the transportation, forwarding and receipt of goods and merchandise manufactured, used or dealt in by them and which have no track connections with any line of railway other than those of said Manufacturers Railway Company, and there are also many other business corporations and industries so located and likewise engaged in the shipment of goods and merchandise in interstate commerce, which are served not only by the lines of other railroad companies but also by the lines of the Manufacturers Railway Company.

(5) Complainants further allege that for a long period of time prior to March 1, 1910, there existed, under tariffs duly filed and effective, through routes and through or joint rates to and from points on the lines of railway of the said Manufacturers Railway Company from and to points on the lines of railway of each of said defendant railway companies and points beyond, and that the tariffs filed with the Interstate Commerce Commission by said defendant railway companies and by the complainant, Manufacturers Railway Company, providing for said through and joint

rates and the divisions thereof, were issued by the railroad companies and bear filing numbers as follows:

(a) B. & O. S. W. R. R Co., Absorption Tariff, I. C. C. No. 6539, Section 1, page 2. Cancellation Supplement to I. C. C. No. 6553, Section 3, page 3.

(b) C., B. & Q. R. R. Co., Absorption Tariff, I. C. C. No. 9756, Item 21, page 7. Cancellation Supplement No. 2, to I. C. C. No. 9756, Item 21a, page 3.

(c) C., R. I. & P. Ry. Co., Absorption Supplement No. 52, I. C. C. No. C-7604, Item 3, page 95. Cancellation Supplement No. 58 to I. C. C. No. C-7604, page 8.

(d) Chicago & Alton R. R. Co., Absorption Tariff, I. C. C. No. 1700, Item 67, page 19; also Item 67dd, page 18. Amendment No. 59, I. C. C. No. 1700. Cancellation Supplement No 62, to I. C. C. No. 1700, Item 67ff, page 17.

(f) C. & E. I. R. R. Co., Absorption Supplement No. 4, to I. C. C. No. 2022 (see page 25). Correcting Supplement No. 52, to I. C. C. No. 2022. Cancellation included in new tariff, I. C. C. No. 2506, Item 88, page 31.

(g) C., C., C. & St. L. Ry. Co., Absorption Supplement No. 25, to I. C. C. No. 2442, page 2 (top). Cancellation Supplement to I. C. C. No. 5094, page 5, 2nd Section "D," page 6, Section 5.

(h) C., P. & St. L. Ry. Co., of Illinois, Absorption Tariff, I. C. C. No. 700, Item 30, page 6. Cancellation Supplement No. 4, to I. C. C. No. 700, Item 6a, page 2.

(i) Ill. Central R. R. Co., Absorption Tariff, I. C. C. No. A-5962, page 6. Cancellation Supplement. Sixth Revised, page 6, issued Jan. 10, 1910, effective March 1st, 1910.

(j) L. & N. R. R. Co., Absorption Tariff, I. C. C.

No. A-9938, page 272. Cancellation Supplement No. 596, to I. C. C. No. A-9938.

(k) Mo. Pacific Ry. Co., Supplement No. 63, to Tariff I. C. C. No. 9481, Item 18, page 7. Cancellation Supplement No. 64, to I. C. C. No. 9481, Item 43, page 9.

(l) M., K. & T. Ry. Co., Absorption Tariff, I. C. C. No. A-3341, Item 37, page 7. Cancellation Supplement No. 1, to I. C. C. No. A-3341, Item 31a, page 2.

(m) M. & O. R. R. Co., Absorption Tariff, I. C. C. No. A-524, Item 10, page 9. Cancellation Supplement No. 5, to I. C. C. No. A-524, Item 48, page 3.

(n) St. L. & S. F. R. R. Co., Absorption Tariff, Supplement No. 12, to I. C. C. No. 5817, Item 9a, page 2.

(o) Cancellation Supplement No. 14, to I. C. C. No. 5817, Item 39, page 2.

(p) St. L., I. M. & S. Ry. Co., Absorption Tariff, Supplement No. 53, to I. C. C. No. 9532, Item 17, page 7.

(q) Cancellation Supplement No. 54, to I. C. C. No. 9532, Item 41, page 9.

(r) St. L. S. W. Ry. Co., Absorption Tariff, I. C. C. No. 2960. Cancellation Supplement No. 1, to I. C. C. No. 2960.

(s) Southern Ry. Co., Absorption Tariff, I. C. C. No. C-1168, Item 11, page 4, also Supplement No. 9, to I. C. C. No. C-1168, Item 37, page 3. Cancellation Tariff I. C. C. No. C-1328, Item 10, page 3.

(t) Toledo, St. L. & Western R. R. Co., Absorption Tariff I. C. C. No. 650. Cancellation Tariff I. C. C. No. A-2, Item 8.

(u) Vandalia R. R. Co., Absorption Tariff, I. C. C.

No. 2419, page 2. Cancellation Tariff, I. C. C. No. 2421.

(v) Wabash R. R. Co., Absorption Tariff, I. C. C. No. 1511, Item 58, page 7. Cancellation Supplement No. 5, to I. C. C. No. 1511, Item 58.

(w) William Cameron, Agent. Bituminous Coal Tariff, I. C. C. No. D-32. Cancellation Supplement No. 2, to I. C. C. No. D-32.

(6) Complainants further allege that on or about the 31st day of December, 1909, each and all of said defendants sent or mailed to the said complainant, Manufacturers Railway Company, a notice to the effect that on and after March 1, 1910, no allowance would be made to said Manufacturers Railway Company for service in and around St. Louis, Missouri, and East St. Louis, Illinois; that said notice was sent or mailed as a result of joint and concerted action on the part of each and all of said defendants and as a result of an illegal and unlawful conspiracy, confederation and combination on the part of said defendants and each of them, and is in violation of an act of Congress known as "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," approved July 2, 1890, and known as the Sherman Anti-Trust Act.

(7) That in pursuance of said notice each of said defendants filed with the Interstate Commerce Commission certain tariffs, supplements or cancellations in the manner provided by the Act to Regulate Commerce and acts amendatory thereof and supplemental thereto, which said tariffs, supplements and cancellations became and were effective on the first day of March, A. D. 1910, in and by which the said defendants and each of them cancelled and annulled said through routes and through or joint rates provided by the

tariffs existing prior to said date as hereinbefore described and alleged, so that since said first day of March, A. D. 1910, there has existed no through routes or through or joint rates from or to points on the lines of railroad of said Manufacturers Railway Company in the said State of Missouri to or from points on the lines of railroad of said defendants or points beyond in states and territories other than the state of Missouri or to or from the District of Columbia or foreign countries and said defendants and each of them have failed and refused since said date to establish said through routes and joint rates as required by Section one (1) of the said Act to Regulate Commerce.

(8) Complainants further allege that for the said industries located exclusively upon and served solely by the lines of railroad of the complainant, Manufacturers Railway Company, there has not existed since March 1, 1910, any reasonable or satisfactory through route for shipments forwarded from or consigned to any of said industries, and that for the industries located in close proximity but not directly upon the tracks of said Manufacturers Railway Company there has not existed since said date any reasonable or satisfactory through route, and that as to the industries located both upon the tracks of the said Manufacturers Railway Company and the tracks of said defendants or either of them there has not existed since said date any reasonable or satisfactory through route, and that such through routes are necessary and essential to the business of said complainants and such other industries.

(9) Complainants further allege that said through routes and through or joint rates are necessary and essential to said Manufacturers Railway Company for

the reason that without them it will lose a large volume of traffic from industries upon, along or near its line of railroad, which said traffic will be diverted to the St. Louis, Iron Mountain & Southern Railway Company, which is the only competitor of said Manufacturers Railway Company in the part of the City of St. Louis, Missouri, where its said tracks are located, and that without such through routes and through or joint rates, the said industries along, upon or near the said lines of said Manufacturers Railway Company, and all other persons, firms or corporations in said City of St. Louis desiring to use or ship over the lines of railway of the said Manufacturers Railway Company will be greatly injured, for the reason that they and each of them will be compelled to pay, in addition to the existing tariff rates, charges for the services performed by said Manufacturers Railway Company.

(10) Complainants further allege that the only reason assigned or given by the defendants or any of them for their said action in so making said tariff changes, effective March 1, 1910, is the groundless fear or doubt as to whether the allowances or divisions previously made to or with said Manufacturers Railway Company for service rendered by it are legal or reasonable, and that none of said defendants has ever claimed or charged that said Manufacturers Railway Company did not furnish a reasonable or satisfactory through route from all points upon its lines of railway to points upon or beyond the said lines of railway of said defendants or any or either of them.

(11) Complainants further allege that the said through and joint rates and through routes established by the said defendants with said complainant, Manufacturers Railway Company, by the tariffs in effect

prior to said first day of March, 1910, were reasonable and lawful and necessary for the conduct of the business of said Manufacturers Railway Company and for the transportation of freight from the industries located upon, along or near its lines of railway, and that there is no other reasonable or satisfactory through route from or to such industries located on or near the lines of said Manufacturers Railway Company for shipments to or from points on said other lines of railroad.

(12) Complainants further allege that the said Manufacturers Railway Company as to material purchased by it and which is transported to said City of St. Louis over the lines of any of said defendants, and as to the goods and merchandise transported for any or all industries, persons, companies, firms or corporations located upon or along the lines of said Manufacturers Railway Company over its said lines and over the lines of any of said defendants, renders a service connected with such transportation and furnishes instrumentalities used therein, for which service and instrumentalities so rendered or furnished the said Manufacturers Railway Company is entitled to a just and reasonable charge and allowance to be paid by the said defendant or defendants for which said service is rendered or said instrumentality furnished as provided in Section 15 of said Act to Regulate Commerce.

(13) Complainants further allege that the said Manufacturers Railway Company is not a "tap line" or industrial railroad, but is a common carrier as such term is defined and used in the Act to Regulate Commerce and in the acts amendatory thereof or supplemental thereto, and that it is actually engaged in the

business of a common carrier of goods and merchandise from points in the City of St. Louis, State of Missouri, to points in other states and territories of the United States and foreign countries, and is a common carrier of goods transported from such other states, territories and foreign countries to points in the City of St. Louis in said State of Missouri, and is entitled to said through routes and joint or through rates as allowed by said tariffs in effect prior to the first day of March, 1910.

Complaints further allege that said Manufacturers Railway Company is organized under and by virtue of Article II of Chapter 21 of the Revised Statutes of the State of Missouri of 1879, now known as Article II of Chapter 12 of the Revised Statutes of the State of Missouri of 1899, being an act of the General Assembly of said State of Missouri for the incorporation of railroads as common carriers for public use in the conveyance of persons and property with all the powers of a common carrier engaged in the transportation of persons and property, among such powers being the power to exercise the right of eminent domain; that said Manufacturers Railway Company has been granted several franchises by the Municipal Assembly of the City of St. Louis which could only be granted to a railroad company duly organized and doing business as a common carrier, and that several of said ordinances were granted upon the express provision and condition that the said Manufacturers Railway Company should perform the duties of a common carrier of freight for the citizens of and industries located within the City of St. Louis, Missouri, and the City of East St. Louis, in the State of Illinois.

Complainants further show that the said Manufactur-

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ers Railway Company is being taxed by the State of Missouri in the manner required by the laws of said state for the taxation of franchises and property owned and enjoyed by railroad corporations organized under the laws of said state and doing business therein as common carriers, which method of assessment of such franchises and property was and is different from the method of assessment prescribed by said laws for the property of corporations located in said state other than common carriers.

(14) Complainants further allege that the said Manufacturers Railway Company has filed and is filing all of the reports required by the Act to Regulate Commerce with the Interstate Commerce Commission, and is performing all of the acts required of a common carrier by said Act to Regulate Commerce, and keeps its accounts in accordance with the uniform system of accounts prescribed by the Interstate Commerce Commission for carriers engaged or participating in interstate commerce, and that all of the tariffs effective over the lines of said railroad of said Manufacturers Railway Company are duly published and filed and are now on file with the said Interstate Commerce Commission, as in said Act to Regulate Commerce is provided.

(15) Complainants further allege that the refusal of said defendant companies and each of them to longer continue said through routes and through or joint rates and in cancelling said through routes and through or joint rates is unjust, unreasonable and unlawful, to the great loss and damage of said complainants and others similarly situated, and that such action constitutes an unjust and unlawful discrimination as between the industries and shippers located

upon, along or near the lines of railroad of said Manufacturers Railway Company and other industries and shippers in said City of St. Louis, State of Missouri.

That such tariff changes subject complainants and all other industries, persons, companies, firms and corporations shipping or desiring to ship goods or merchandise over the lines of said Manufacturers Railway Company and thence over said other lines, and also subject the locality in which the lines of railway of said Manufacturers Railway Company are located and the particular description of traffic so shipped over the lines of said Manufacturers Railway Company and thence over said other lines of railway, to undue and unreasonable prejudices and disadvantages and give undue and unreasonable preferences and advantages to other industries, persons, companies, firms, corporations and localities and to the particular description of traffic shipped by such other industries, persons, companies, firms and corporations and to such other localities contrary to and in violation of the terms and provisions of Section 3 of said Act to Regulate Commerce.

Wherefore, the complainants pray that the defendants and each and all of them be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendants and each of them to establish or re-establish through routes and through or joint rates over their lines and the lines of the complainant, Manufacturers Railway Company, as the same existed prior to the first day of March, 1910, and to cease and desist from longer refusing to establish or re-establish said through routes and said through or joint rates, and that it be determined herein what shall be the proper

and reasonable division of said through or joint rates for the transportation of such goods and merchandise over the lines of railroad of said complainant, Manufacturers Railway Company, and each of said defendants, and that the defendants be ordered and required to establish or re-establish and maintain for the period of two years from the date of the order herein the said through routes and through or joint rates as the same existed prior to said first day of March, 1910, and that due reparation be awarded to said complainants and each of them, and for such other and further order or relief as the Commission may deem necessary in the premises.

Dated at St. Louis, Missouri, this second day of March, A. D. 1910.

Manufacturers Railway Company,
Anheuser-Busch Brewing Association,
Stecher Cooperage Works,
Independent Breweries Company,
Bradbury Marble Company,
St. Louis Basket & Box Company,
Fidel Ganahl Lumber Company,
St. Louis Cooperage Company, and
Western Foundry & Sash Weight Company,

By.....

Their Attorneys.

.....

St. Louis, Missouri.

.....

Chicago, Illinois,

.....

St. Louis, Missouri,
Attorneys for Complainants.

The Answer of the St. Louis Southwestern Railway Company, in said proceeding, was as follows, omitting captions and signature of counsel:

Answer of Defendant, St. Louis Southwestern Railway Company.

Comes now on this day the St. Louis Southwestern Railway Company, one of the defendants in the above cause, and for answer to complaint herein states:

I.

It admits the allegations in paragraph one of the complaint.

II.

It has not sufficient information to either admit or deny the allegations in paragraph two of the complaint, so therefore requests proof thereof.

III.

This defendant is a common carrier engaged in interstate commerce and subject to the Act to Regulate Commerce.

IV.

It has not information sufficient to enable it to deny or admit the allegations in paragraph four, and if said allegations are material, requests proofs thereof.

V.

Defendant admits that prior to March 1, 1910, it had in effect the tariff and supplement mentioned in subdivision "R" of this paragraph.

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VI.

Defendant gave notice in accordance with the law that on March 1, 1910, its said tariff would be cancelled and no allowance therefor would be made to the Manufacturers Railway Company, but denies that said notice was mailed as a result of any conspiracy, confederation and combination as alleged in said paragraph in violation of the Sherman Anti-Trust Act.

VII.

Defendant says that under the aforementioned tariff which was cancelled, there was no through route and said tariff did not provide for joint rates, but merely provided for certain allowances to the Manufacturers Railway Company, and denies the allegations in paragraph seven, and says that the shippers mentioned in the complaint have a through route from their plant to any point reached over the lines of this defendant.

VIII.

Defendant denies the allegations in paragraph eight of the complaint.

IX.

Defendant denies the allegations in paragraph nine of the complaint.

X.

The defendant denies the allegations in paragraph ten of the complaint and says that it cancelled the said tariff for the reason that it was advised that the allowances that it heretofore made to the Manufacturers

Railway Company were illegal and not permitted under the law for the reason that it was advised, believed and still believes that the Manufacturers Railway Company is merely an industrial or tap line, and, under the law, not entitled to any part of the through rate from or with this defendant.

XI.

Defendant denies the allegations in paragraph eleven of the complaint.

XII.

Defendant denies the allegations in paragraph twelve of the complaint, and further answering, says that if the Manufacturers Railway Company is entitled to compensation as a carrier, it is now entitled to receive from this defendant any allowance of the through rate.

XIII.

Defendant says that the Manufacturers Railway Company may be organized as a common carrier as therein alleged, but denies that it is entitled to an allowance; but if so, is not entitled to the allowance heretofore paid to it under the tariff cancelled, and otherwise denies each and every allegation in paragraph thirteen contained.

XIV.

This defendant has not sufficient information to affirm or deny the allegations in paragraph fourteen, and therefore requests proof thereof.

XV.

Defendant denies each and every allegation in paragraph fifteen of the complaint contained.

Further answering, defendant says that it denies each and every allegation of the complaint contained, except those specifically admitted herein and that it cancelled the said tariff and arrangements because it believed that the same were unlawful as aforsaid, and if not unlawful, that the allowance given to the Manufacturers Railway Company was unreasonable, excessive and unjust.

Wherefore defendant having fully answered, prays that the complaint may be dismissed, etc.

It was agreed by counsel that copies of the Answers of the other defendant railroads in said case, need not be incorporated in this record; that either side may include in the record such parts of the Answers of other defendants, as either party may desire to offer in evidence.

In lieu of abstracting all of said other answers, the following summary thereof as contained in the first report of the Commission (page 307) is here copied as a correct statement of the issues made by said answers:

"Some of the defendants deny that complainant, Manufacturers Railway Company, is a common carrier engaged in interstate commerce, or that through routes and joint rates existed prior to March 1, 1910; and allege that the tariffs referred to in the petition merely provide for absorption of switching charges of the Manufacturers Railway Company, except as to tariffs on bituminous coal, which gave it a division of the rate; that other satisfactory and reasonable

through routes and joint rates now exist for the traffic of complainants. In the answers of several defendants they say that they neither admit nor deny the allegations of complaint, but in view of the decision of the Commission in certain cases, especially Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co., 17 I. C. C. Rep., 338, they submit the question as to whether complainant carrier is an industrial or tap line, or is a common carrier and entitled to through routes and joint rates, and whether the further payment of allowances to complainant carrier is lawful or reasonable, to the judgment and determination of the Commission. The answer of one defendant asserts that it had no doubt as to the legality and reasonableness of its allowances to the Manufacturers Railway Company previous to the date of the decision above referred to, but in view of that decision has fears and doubts as to their legality since said decision. The answers of other defendants deny generally the allegations of complaint. The Iron Mountain avers that the Manufacturers Railway Company was organized and its tracks constructed to serve the Anheuser-Busch Brewing Association alone, and that it is and always has been owned and controlled by the same interests that own and control the Brewing Association; that it handles practically no traffic except for the Anheuser-Busch Brewing Association, and that the services of complainant carrier involve the switching of cars between industrial establishments reached by its tracks to the tracks of the Iron Mountain and the St. Louis Transfer Company, and is exclusively a switching service."

The transcript of testimony and other evidence before the Commission, consisting of four volumes of

typewriting, constituting a part of the record before the Commission which is introduced into this record, is by consent, received subject to correction as to any inaccuracies therein, and subject to the addition of any exhibits that either side may desire to have considered by the Court in connection with the testimony contained in said volumes, the formal certification of the record before the Commission being waived.

As a part of the record in said proceeding before the Commission, there are here printed a copy of the Petitions for Rehearing filed therein by the Manufacturers Railway Company, and by the complaining shippers, respectively, as follows:

Separate Application of Manufacturers' Railway Company for Rehearing.

Now comes the complainant, Manufacturers Railway Company, and prays the Honorable Interstate Commerce Commission to grant a rehearing in the above entitled cause, and for grounds of this application respectfully shows:

I. There was no intimation in the first opinion of the Commission in this case, that the Commission would upon the supplemental hearing, re-open, reconsider or re-decide the questions of law and fact which had already been decided by it, as evidenced by its first opinion.

No order had been made re-opening the case upon the conclusions of law and fact there announced. On the contrary, we are informed that a request of the Louisville & Nashville Railroad to have the case reopened, was denied.

The questions specified in the first opinion, as still

open for consideration and determination were clearly defined therein, and were expressly limited to the following subject-matter (23 I. C. C. R., p. 316).

"The record before us does not present a sufficient basis for a satisfactory determination of the question **as to the reasonable and just division or allowance** to the complainant carrier and the further question as to **whether a part of the services** performed by it **is or is not plant-facility service** within the principles enunciated in the cases above referred to. **Respecting these questions** further investigation by the Commission will be made.

The original record contains statements from defendants to the effect that should the Commission sustain the legality of the divisions or absorptions, reparation should be awarded on the basis of the reasonable allowances determined upon by the Commission. **When after further hearing** and examination **the proper amounts have been ascertained reparation will be awarded** on the basis of our final action respecting divisions or allowances."

Consequently, both the evidence introduced for complainants upon the supplemental hearing, and the presentation of their case in briefs, were in the main likewise limited, and the propriety of the first decision was dealt with merely as incidental to the questions reserved.

Thus, in our principal brief upon the supplemental hearing, we said (pages 3 and 4):

"We assumed at the supplemental hearings, and respectfully contend, that the points which have already been decided in this case are not open for further discussion or for reconsideration or review before the Commission, but since it is the declared purpose of the

defendant, Louisville & Nashville Railroad, to endeavor to re-open the entire case, we shall treat the supplemental evidence relating to points already decided to the extent only of showing that it fully and firmly supports the conclusions already reached.

Since this brief is supplemental to the former briefs for complainants, no statement of the pleadings will be repeated here, but this brief will be devoted chiefly to the questions now before the Commission for decision, to-wit:

1. What part of the service of complainant carrier, if any, is plant facility?

2. What will be a reasonable allowance to the complainant carrier?

3. What is the amount of reparation due the complainant carrier?"

And in our reply brief at the supplemental hearing we said (page 6):

"We respectfully renew our contention that **the points already decided** in this case are **not open for further discussion or review** before the Commission, and we repeat our purpose of attempting to limit this reply to those matters which are now open for discussion, pausing only to note and correct certain inaccuracies in the defendant's brief."

In the argument of the case, also, upon the supplemental hearing, complainants' counsel proceeded upon the assumption that what the Commission had decided, was not open for review, and there was no intimation by the Commission that it would without notice to the parties, and without an order re-opening that part of the case, re-consider and re-decide the questions which it had already decided.

The complainants, therefore, upon receiving copies of the second opinion early in August, 1913, were confronted by the unexpected result that the Commission had in fact thus re-opened, re-considered and re-decided all of the questions of fact and law which had been decided in its first opinion.

Therefore, we now respectfully submit that we are entitled to an opportunity to be heard upon all of the questions decided by the Commission in its second opinion which were not among those expressly reserved for decision by its first opinion—and, inasmuch as those which were so reserved, are vitally related to the others, that the entire case should be re-heard, reconsidered and re-decided.

II. It is beyond the jurisdictional power of the Commission, to deny to any railway corporation, which is a common carrier at law, and which in fact maintains toward a shipping public the attitude of being a common carrier, any of the rights or remedies of common carriers subject to the Act to Regulate Commerce.

In the case at bar, although the Manufacturers Railway Company is held to be a common carrier, the decision denies it:

(a) The right to agree with other carriers for a division of joint rates to and from St. Louis for transportation services rendered by it in the movement of freight in Interstate Commerce;

(b) The right to agree with other carriers for an absorption by them of a reasonable charge for switching services rendered by it in the movement of freight in Interstate Commerce to and from St. Louis;

(c) The right to be shielded from undue discrimination against it and in favor of other competing common carriers, in that competing carriers performing termi-

nal services are held entitled to be paid therefor out of the St. Louis rate, whereas this carrier, having equal rights under the law with its said competitors, is held not so entitled;

(d) The right to reparation for damages sustained by it for violations of the Act by the defendant carriers.

III. That certain findings of fact and conclusions of law contained in the decision, opinion or report of the Commission, dated June 21st, 1913 (served in August, 1913), were and are erroneous, for the respective reasons and upon the respective grounds hereinafter stated as to each.

IV. That said decision should be reversed and modified on account of consequences which would result from compliance with said decision, all as hereinafter set forth, which consequences justify, and in the interest of justice require, a reconsideration of the case.

III. Specification of findings and conclusions claimed to be erroneous, with statement in each instance of grounds of error.

We respectfully submit that the following conclusions of law and findings of fact embodied in the second opinion or decision of the Commission were and are erroneous for the respective reasons, and upon the grounds now to be stated in respect of each:

1. **The nature of this case.**

On pages 108 and 109 of the second opinion, the Commission says:

"We should not confuse the nature of this proceeding. This **is not a case** in which there is **a blanket rate over a wide territory**, such as in the lumber tap-line cases, and in which the trunk lines are willing to make absorptions or divisions out of their own rates and the

only duty of the Commission is to see to it that such payments by the trunk lines are not overdone and in effect rebates to the industry through the railway."

And on page 109: "**It is,** on the contrary, one in which the trunk lines are, **on this record at least, resisting the demands** of a connecting common carrier and its shippers for an order that would **materially diminish their revenues** and in which the Commission is asked to make an affirmative order which **would have that effect.** It is manifest that **we cannot consistently or lawfully do this.**"

And on pages 110 and 111: "As heretofore shown, the prayer of the petition is for the establishment or **re-establishment** of **'through routes and through or joint rates as the same existed prior to March 1, 1910,'** which means the establishment or re-establishment of the St. Louis rate with the previous absorptions. It is apparent from the foregoing findings that the prayer of the petition cannot be upheld to that extent.

"We have, in other words, dealt with this case as presented **by the pleadings** and at the hearings, **upon the understanding** that the trunk lines **are resisting the demands of the railway** and its shippers and in accordance with what we conceive to be our duty and limitations in the making of joint rates **by affirmative order.**"

The foregoing findings and conclusions are erroneous in that:

(a) This **is** a case (upon the record at the supplemental hearing), "in which there **are blanket rates over a wide territory,**" viz.: throughout the extensive territory included within the switching limits of St. Louis and East St. Louis, throughout which the St. Louis rate applies to include the spotting of cars to

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industries; and it is a case "in which the trunk lines **are willing to make absorptions or divisions out of their own rates,** and the only duty of the Commission is to see to it that such payments by the trunk lines are not overdone," etc.

The fact that the trunk lines are willing to make such absorptions or divisions was shown by their having done so, by filing new tariffs even before the first decision (see page 315 of the first opinion), and by their having continued these tariffs in force until after the second decision, which pronounced them unlawful.

Even the Louisville & Nashville Railroad Company (the only defendant which made an active defense at the supplemental hearing) continued in practice its attitude of willingness to make such absorptions and allowances, although upon the record questioning their lawfulness.

(b) The Commission, although not a court, has in its second opinion dealt with this case upon a strict and technical construction of the petition, and in doing so has, contrary to the rules of pleading, permitted the form of the prayer for relief to control over the facts stated in the petition (see also pages 100 and 101 of the second opinion); it has also considered and decided the case strictly upon the issues framed by the pleadings, although the record before it showed that in substantial respects not only the law but the attitude and situation of the parties had changed since the filing of the petition, and that notwithstanding such changes a liberal construction of the pleadings as interpreted by the briefs, disclosed the nature of the relief sought in view of the changed conditions, and that such relief could and should have been granted.

When the petition was filed, the right of complainants under the Act, to a compulsory establishment of

through routes with joint rates was predicated in part upon proof that "no other reasonable and satisfactory through" route existed.

That condition was removed from the law prior to the first decision.

When the petition was filed, none of the defendant lines were willing to **voluntarily** grant divisions and allowances out of the St. Louis rate.

When the second decision was rendered all of them were not only **willing,** but were in fact doing so, and the record disclosed the fact. So that when the second decision was rendered the allowances and absorptions then being paid by the defendant lines fell strictly within the class held even by the second opinion to be lawful, viz.: those voluntarily paid by the lines to cover terminal services "performed for the trunk lines." And yet the Commission held them unlawful, and therein erred, as the result of which all the lines have cancelled them.

The opinion **should have informed** the lines that the voluntary absorptions and allowances being paid by them were lawful, if not excessive in amount.

The opinion failed to distinguish between the facts alleged and proved and the relief appropriate thereto, in respect of "the period of reparation,"—and the facts of record and relief appropriate thereto, in respect of the conditions existing when the record was closed and the decision made.

As to the reparation period, the relief sought, whether in form it be expressed in terms of "establishing joint rates and prescribing divisions thereof," or of "ordering the defendants to cease and desist from causing unjust discriminations" against the complaining carrier and shippers on its line,—was in effect to

cause and **permit** the defendant lines to **resume their long established practice** of handling shipments at the St. Louis rate, and **to award reparation** for its wrongful discontinuance.

As of the date when the second opinion was rendered, the relief sought, was in effect, to **permit** the defendant lines to **continue** the said practice theretofore **voluntarily resumed by them,** of handling shipments at the St. Louis rate, to advise them that a discontinuance of that practice as to complainants, while continuing it as to their competitors on other lines in St. Louis, would create unjust discrimination against the complainant carrier and the shippers—and to award reparation for the reparation period.

In substance, the foregoing appeared from the averments of the petition, as supported by the proofs and briefs. (See testimony of Busch, original record page 181; complainants' principal brief on original hearing, page 226; complainants' reply brief on original hearing, pages 6, 14; complainants' principal brief on supplemental hearing, page 57; and complainants' reply brief on supplemental hearing, page 73.)

2. **Reciprocal switching relations:**

On pages 103 to 105 of the second opinion, in considering the question of discrimination, the Commission discusses the fact that it is the practice of the trunk lines to absorb the switching charges (for terminal services) of the Terminal Railroad Association, and of its subsidiaries operating as separate corporations, and also to absorb those of other line carriers rendering terminal service in St. Louis, and in effect holds that the Manufacturers Railway Company is not entitled, for its own and its shippers' protection, to enjoy like absorptions, because of the facts (a) that the Terminal and its subsidiaries are owned by the trunk lines and

therefore should not be treated as separate carriers or competitors of the complainant carrier, and (b) that the trunk lines have reciprocal switching relations to offer each other, whereas the Manufacturers Railway, having no line haul, cannot offer reciprocal switching relations.

In stating its conclusions upon this point the Commission says (second opinion, page 105):

"In this connection it may be argued by complainant that the Terminal Association is **a separate corporation** from **the trunk lines.** This is true. But it is also true that intermingled **with the lines** controlled by it as a separate corporation are included in the same reciprocal arrangement **certain terminal lines owned or controlled by its proprietary or tenant lines direct,** as is the **Wiggins Ferry Company,** as well as the various terminal properties **of the individual trunk lines themselves,** all **of which together constitute the united terminals of all the trunk lines entering the city.** There is therefore here presented **a different situation** from that which **would be presented** if we had under consideration **two or more independent terminal systems in St. Louis, and the trunk lines absorbing the charge of one or some of them** and refusing **contemporaneously** to **absorb the charge of the others under like conditions.**"

The result is that the opinion denies to the Manufacturers Railway rights and privileges which it at the same time accords to competing common carriers, and solely because of the alleged distinction in respect of reciprocal switching relations.

We respectfully submit that the above conclusions are erroneous in that:

(a) The Commission has no power under the Act to deny to a common carrier the right to arrange for or

receive absorptions because it has no reciprocal switching relations with the lines granting them. The Act neither makes nor permits any such classification of carriers, nor any such discrimination between carriers.

(b) The Commission has no power to ignore the separate operating corporate entity of the Terminal Railroad Association and of its respective subsidiaries, or to treat them as part of the trunk lines rather than as separate terminal carriers, in considering questions of rates or discrimination. To do so was contrary to the ruling of the Supreme Court in the case of I. C. C. v. Stickney, 215 U. S. 98, at 108, where the Court said:

"The Union Stock Yards Company is an independent corporation, and **the fact,** if it be a fact, **that** most or even **all of its stock is owned by the several railroad companies entering into Chicago, does not make its lines or property part of the lines or property of the separate railroad companies.**"

(c) The attempted distinction in respect of the existence or non-existence of reciprocal switching relations, is not sound in fact or theory as shown by the record (and by complainants' principal brief on supplemental hearing, pp. 108-114, 123).

Even if the Commission had had power to make such a classification of or discrimination between carriers, such distinction should not have been made in the case at bar.

(d) The Commission erred in concluding that "there is therefore here presented a different situation from that which would be presented if we had under consideration two or more independent terminal systems in St. Louis, and the trunk lines absorbing the charge of some of them and refusing contemporaneously to absorb the charge of others under like conditions."

We respectfully contend that the situation presented in the case at bar is not "different" but is **substantially the same** as that above stated.

Even if the Commission had had the power to hold and had correctly held that the Terminal and its subsidiaries should be treated as a part of the line of each proprietary carrier, that would not justify a like conclusion in respect of the trunk lines which have their own terminals in St. Louis, which are operated independently of the Terminal.

Thus, the Iron Mountain's terminal facilities operated in South St. Louis in competition with the Manufacturers Railway, constitute no part of the Terminal Railroad's unit system of terminals, and the other trunk lines have no interest in them. They use them just as they use the facilities of the Manufacturers Railway Company.

Therefore, it is clearly discriminatory against the Manufacturers Railway and its shippers to permit the trunk lines to absorb the switching charges of the Iron Mountain, while refusing to permit them to absorb those of its competitor, the Manufacturers Railway Company.

Again, the Terminal is not owned by **all** of the St. Louis lines. There are a number of lines, not proprietors of the Terminal, which granted allowances to the Manufacturers Railway. The Terminal is not a part of their lines and **should not have been so considered.**

3. **"Voluntary" as distinguished from "prescribed" absorptions or divisions; and for which, shipper or trunk lines, are terminal interchange services rendered?**

On page 105, second opinion, is the following finding or conclusion:

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"We have carefully considered the evidence as presented by the combined record and, considering all the facts, circumstances, and conditions as now appearing, it is our conclusion, and we so find, * * * that **the payments formerly made out of their through rates by the trunk lines** to the railway were **absorptions** in **compensation for services rendered to the trunk lines** and **were in no sense divisions of joint rates** as for services rendered **for the shippers served by the railway**, as **they would be considered to be under joint rates prescribed by order of this Commission.**"

And on page 103: "We are not to be understood as saying that when carriers in the through route under their tariffs absorb the switching charge of a terminal line, the resulting rates are not to all intents and purposes, and in fact, **joint rates so far as concerns the shipping public.** What we do say is that while the trunk lines **may thus voluntarily** establish such rates on that basis, **we would not be justified in requiring them to do so.**

"There is, therefore, we think, in legal effect a well defined distinction between **an absorption** which may be made by a trunk line **voluntarily** and the **division of the joint rate** which may by lawful order be **prescribed** by this Commission. This being so, it follows that there is also in legal contemplation a well defined distinction between **the character of the services** rendered by the railway **under the absorption tariffs** of the trunk lines **formerly in effect**, and **the same services under the joint rate which could by lawful order be prescribed by this Commission.**"

Without attempting to brief any proposition, and merely for the purpose of stating clearly the reasons or grounds upon which we respectfully contend that the present attitude and conclusions of the Commis-

sion upon the foregoing subject matter are erroneous, we first shall state our contentions concerning the right of complainants and the power and duty of the Commission to grant relief in respect of them.

We respectfully contend:

A. That there is no essential distinction between an "absorption" and a "division" as applied to a participation in a through and joint rate. The difference is one of name or accounting method only. In each case it represents a share of the revenue resulting from the St. Louis rate, whether that share be provided for in and by what are called "division sheets," or in and by what are called "tariff absorptions of terminal service charges"; and whether it be expressed in a fixed proportion of the entire rate or on a flat basis of so much per car.

B. That the amended Act, at the time of the decision, gave the complainants each of the following rights, and made it the duty of the Commission to recognize and enforce them, with adequate powers to do so, viz.:

To have **established** by the Commission "through routes * * * and joint rates as the maximum to be charged," and to have **prescribed** by the Commission, "the **division of such rates** * * * and the terms and **conditions under which such rates shall be operated.**" (Section 15.)

To have determined by the Commission whether "any individual or joint rates or charges, * * * or any **individual** or **joint** regulations or **practices** whatsoever of such carriers * * * are **unjustly** or **unreasonably discriminatory**, or **unduly preferential** or **prejudical** or otherwise in violation of the * * * Act,"—and if they are, then to have the Commission **prescribe** "what shall be the just and reasonable individual or **joint rate** charge or charges to be thereafter absorbed in such

case as the maximum to be charged, and **what** individual or **joint** classification, regulation or **practice** is just, fair and reasonable **to be thereafter followed,** and to **make an order** that the carrier or carriers **shall cease and desist** from such violation to the extent to which the Commission finds the same to exist, and * * * **shall conform to and observe the** regulations or **practice** so **prescribed.**" (Section 15.)

To have enforced the provision that: "Every common carrier * * * shall, according to their respective powers, afford all reasonable, proper and **equal** facilities **for the interchange of traffic between their respective lines** * * * and **shall not discriminate in their rates and charges between such connecting lines.**" (Section 3.)

C. That under the Act, as above quoted, the Commission could and should have permitted and required the St. Louis lines **to continue the practice of paying to the Manufacturers Railway Company** a part of the St. Louis rate, so long as the general practice of all carriers continued in force **to treat industrial spur tracks in St. Louis as points of origin and destination for interstate shipments.** And this, upon either of two grounds, each of which was supported by the facts pleaded and proved; whether expressed with technical accuracy in the prayer for relief or not, viz.: (1) That the service of the railway, being **part of the transportation of property** moving in Interstate Commerce, the Railway and its shippers were entitled to have such freight moved under **a joint rate to be established by the Commission** (if the carriers did not voluntarily establish it); and the Railway was entitled to have the Commission **prescribe the division of that rate** (if the carriers did not agree), and the conditions under which it should be made effective.

In the enforcement of that right the Commission might and should have adopted either the form of "**establishing a joint rate,** and **prescribing its divisions,**" —or the form of "prescribing a practice of absorbing terminal charges." In either case the substance would have been identical, viz.: Shippers upon the Railway would have procured through and joint rates (the St. Louis rates), to and from their spur tracks on the Railway, and the Railway would have procured a portion of the St. Louis rate to compensate for its portion of the interstate transportation service.

The only essential to the existence of that right upon the above ground, is that **the character of the service rendered by the Railway** be **a part of the act of transporting** the freight over **the through route.**

If and when it is a part of such transportation, then the service becomes of the class referred to in the second opinion (page 101), as "performed **for the trunk line** and not for the shipper."

Then also, it becomes immaterial whether the division is **in fact voluntary** (i. e., consented to by the trunk lines), or **involuntary** (i. e., prescribed by the Commission), and adopted by the carriers because so prescribed.

In either case it is **in law consented to by the trunk lines.** In the one case (voluntary), they **expressly** consent; in the other case (involuntary), the carriers having failed to agree, the law **imposes consent** as a condition to their doing the business, and their consent **becomes** implied when they transact it.

"Consent" **implied by law,** and contract **obligations imposed by law,** are familiar things in the law. Thus in the field of commerce law, it is elementary that the element of **consent,** or express **agreement,** is the distinguishing characteristic of "a joint rate."

No rate is "joint" unless every part has been "agreed to" by the carriers. Yet the Act (Section 15) expressly provides that the Commission may establish through routes and **joint** rates, and prescribe divisions thereof, when the carriers have "refused or neglected" to establish them **voluntarily.**

Surely no one will contend, that joint rates and divisions thereof established by the Commission pursuant to the Act, are **not "joint"** because imposed against the actual wishes of the carriers.

After they have been so prescribed, the law **implies the consent** of the carriers, and they are thereafter no less **joint** in legal effect than if they had been established originally by the voluntary act of the carriers.

One more illustration: It is familiar law that a party who has contracted to convey land may be compelled by a court of equity to execute a deed. No one would contend that a deed executed under such compulsion was voluntarily made, and yet in the law, it is his voluntary act and deed, consented to by him, and it operates to convey his title exactly as though he had executed it not under legal compulsion. The fact that his consent was compelled by law does not prevent it from being a valid consent.

Just so in the case at bar, a **joint** rate **prescribed by the Commission,** when put into effect by the carriers (even though forced to do so by order of the Commission), becomes in the law a rate **consented to by them,** and it thereafter partakes of all the consequences and characteristics of a joint rate voluntarily made by them, so far as the prescribed divisions and allowances are concerned.

Therefore, we respectfully submit that there is not, either in law or fact, any essential distinction as to joint through rates between an absorption which may

be made by a trunk line voluntarily, and a division of a joint rate or allowance out of it, which may be prescribed by the Commission; and that the Commission erred in holding otherwise.

And, since the right of a common carrier to rates or divisions, is determined under the law by the **character of the service performed,** no distinction in the character of such service can be predicated upon any supposed distinction between such "voluntary absorptions" and "prescribed divisions." They are merely alternative forms in which is expressed the participation in the revenue arising out of the rate, of the carriers who engage in rendering the service of such transportation. In themselves they neither constitute nor express any distinction in the legal character **of the service.**

Therefore, while we agree with the Commission's conclusion "that the payments **formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered,**" by the railway, we do not agree, and respectfully submit that the Commission erred in holding, that such services were rendered **"for the trunk lines"**; and that it erred fundamentally in holding that such services if rendered under voluntary tariffs providing divisions or absorptions out of the St. Louis rate, would be lawfully compensated because rendered **for the trunk lines,** whereas if rendered under tariffs **prescribed** by the Commission, like divisions or absorptions thus provided would be unlawful, because the services would be rendered **for the shippers.**

We respectfully submit that the new ground thus taken in the second opinion is not tenable, and should be abandoned. It does not solve this case, nor can it aid in solving others.

As we read the distinction expressed in the above

quoted excerpts from the second opinion (pages 105, 103), the Commission has made it the turning point of the decision.

The distinction rests upon the propositions: (a) that the charges of a terminal carrier for its portion of the servise in transporting an interstate shipment cannot lawfully be absorbed by the trunk line unless the joint rate under which the freight moved, and the division of it or absorption allowance out of it, were **voluntarily agreed to** by the trunk line, as distinguished from a joint rate and division thereof **prescribed by the Commission**; (b) that in the former case, because the rate and division were **agreed** to i. e., "voluntary," therefore the service rendered by the terminal carrier is rendered for the trunk line, i. e., not only at its request but for its account, and **not for the shipper**; and therefore **may lawfully be paid for by the trunk line**; whereas, in the latter case, the rate and division being **prescribed**, not voluntarily consented to by the carriers, the terminal service cannot be regarded as rendered for the trunk line, nor lawfully to be compensated for by it, but must be regarded as rendered for the shipper, to be paid for by the shipper; and (c) that, therefore, in the case at bar, the trunk lines having cancelled their voluntary joint rates and divisions, and having (at least when the petition was filed), refused to make new ones, the Commission could not compel them to do so, because that would be compelling the trunk lines to pay for services rendered **not to them, but to shippers.**

In considering the above propositions it is necessary to remember: That the subject-matter involved is the service of transporting interstate freight over a through route, under a joint rate, established in the one case by voluntary act of the carriers, and in the other, under order of the Commission, and that the act

of transporting is performed partly by the railway (which renders terminal service in St. Louis), partly by line (and perhaps by other terminal) carriers, which render the rest of the service.

Is there any legal distinction in the two cases between either the **character of the services performed by the railway** (i. e., whether they are performed for the trunk line or the public), or in the **lawfulness** of the railways receiving compensation for its part of the transportation service, **out of the St. Louis rate?**

In each case the entire service, and, therefore, each part of it, is rendered **for the public,** i. e., the **shipper or consignee.** Each participating carrier **renders its part, for that public,** and **no part for any of the other participating carriers.**

The Manufacturers Railway, in performing its part of the service, cannot be said in either case, to serve the trunk lines any more than the trunk lines can be said to serve the Manufacturers Railway. Each severally renders its own portion of the act of through transportation, for the account and benefit of the shipper. Each receives its portion of the through rate paid by the shipper (whether such payment comes to the carrier in the form of a division or absorption, and whether from the shipper, consignee or some other carrier), in compensation for its portion of the service rendered.

No carrier, therefore (trunk or terminal), renders its part of the service **for the account** of any of the other participating carriers, but all of them, acting severally, unite in rendering the through unit of service for the account of the shipper, the public.

"Gathering freight originating" on a terminal line, "to the rails of the trunk line," **is not a service** "performed **for the trunk line**" when such act of gathering

constitutes a part of the transportation of that freight moving in interstate commerce.

It is desirable and convenient to the trunk line to have some other carrier perform that difficult and expensive part (the beginning or end) of the through movement, but the service is performed **for the shipper, not for the trunk line.**

It is so when the service is rendered under joint rates and divisions **voluntarily established;** it is **equally so** when the service is rendered under tariffs providing joint rates and divisions **prescribed by the Commission.**

And the fact that in business or accounting practice, one carrier line collects the entire through freight from the shipper, and pays to the other lines their respective portions thereof, does not even tend to prove that the services of one of them, the terminal carrier, was rendered for the account of the trunk lines, any more than it tends to prove that one of two trunk lines who participated in the line haul and in the divisions thereof, rendered its service for the account of the other.

Whether the through and joint rates, and the divisions of them or allowances out of them for transportation services rendered by the carriers, are established by voluntary act of the participating lines, or are prescribed by order of the Commission, the result is necessarily the same. The carriers (terminal and line) who render service at those rates, do so consenting in law to serve the shipping public in connection with the other carriers whose lines constitute a part of the through routes, over those routes, at the rates and for the respective portions of such rates, which have been thus provided.

And there is no distinction in law in respect of either the character of the service thus rendered, or the iden-

tity of the persons for whom rendered, or the right to payment out of the St. Louis rates, or the rights of the participating carriers or their shippers—between the two classes of cases, "voluntary" and "prescribed."

We therefore respectfully submit that the distinction made in the second opinion is not sound, and that the important conclusions deducted from it are erroneous.

Moreover, they are not in harmony with the express provisions of the Act, which without making any such distinction, empowers the Commission to establish through routes and joint rates, and to fix the divisions thereof.

In other words, we contend: That the Act makes it the duty of the Commission in a case (like this), where through routes exist but the carriers refuse or neglect to voluntarily establish joint rates and divisions—to prescribe such rates and divisions, i. e.—to **compel** the carriers to **consent** to prescribed joint rates and divisions, just as a court of equity is empowered to and will compel a party to execute a deed drawn by the Court and which it is his legal duty to give; and that joint rates and divisions thus established and prescribed, are no different in their character attributes or results, in respect of divisions and absorptions, than joint rates and divisions in like amounts voluntarily established over the same routes.

On page 102 of the second opinion, after speaking of the fact that local service in handling local shipments is performed **"for the shippers"** and that it is to them that the carrier must look for its rate, the Commission asks—"if, therefore, this service is recognized as being performed **for them on local shipments,** by what process of reasoning can it be transformed into one per-

formed **for the trunk line** when rendered as a part of a **through haul** for the same shipper?"

We submit that it is not so transformed, and is not sought to be so transformed. The error underlying the argument of the opinion is (as we have shown above) in the fundamental assumption that the services of the railway "**when rendered as a part of a through haul**" are rendered **for the trunk line.** In fact and in law they are rendered **for the shipper or consignee,** and **so are the local services.** The only difference is that because the service "rendered as a part of a through haul" is a part of a through route service, such service becomes and is a part of **the act of transporting** freight moving in interstate commerce, an act in the performance of which several carriers may participate, and in the compensation for which out of the through route each may share.

The owners of such shipments and the carriers moving them, are given by the Act the right to through and joint rates and fair divisions thereof, and fair practices in respect thereto. No such right is attempted to be given by the Act in respect of local (i. e., intra-state) shipments.

Therefore, a given physical movement of freight over the railway **for a shipper,** under **local** billing, **is not transformed** into a movement **for the trunk line** when the same physical movement is made under **through** billing. It is still a service **for the shipper or consignee,** even though other carriers perform a part of the through movement.

Nor does the Act permit any distinction to be drawn between small carriers and large carriers. Their rights under the law are equal.

What legal justification can be found for treating a small common carrier, even though "newly made" out

of what was formerly a plant facility, any different from a large carrier? Why assume that the portion of a through route movement performed by such a small carrier is rendered **for the shipper** and cannot be paid for out of the St. Louis rate, while holding that a like movement performed by a large carrier is rendered **for the trunk line** and may be paid for out of that rate?

Why assume or hold in the case at bar, that while the Iron Mountain may lawfully receive compensation out of the St. Louis rate for its terminal service in starting a car upon its through route by transporting it from the north side of the Fairbanks plant and delivering it to the Wiggins Ferry for a trunk line connection—the Manufacturers Railway cannot lawfully receive such compensation for its like service from the south side of the same plant?

No such discrimination between common carriers is made or permitted by the Act or under the common law.

It follows that the conclusions of the Commission in the first opinion were correct, and that the complainants were and are entitled to have shipments made at the St. Louis rate without any addition thereto, and to have the services of the railway paid for out of the St. Louis rate, and to the establishment and maintenance of tariffs so providing.

The Commission could and should have required the defendant lines to protect the St. Louis rate to the railway and its shippers, on the additional ground (sufficient in itself) that so long as their general practice continues of absorbing into the St. Louis rate the charges of the Terminal and of its subsidiaries, and the charges of the trunk lines having St. Louis terminals of their own, for spur track and industrial deliveries in the St. Louis district, it would create an undue and

unjust discrimination against shippers on the line of the Railway, and against the Railway itself, to discontinue such practice as to them.

Our contention upon this point as decided in the second opinion will be presented later, in a separate assignment of error, relating to the subject of discrimination.

With trunk line allowances to an **industry** for services rendered or facilities "furnished by the shipper," we have no concern in the case at bar. If any language in the petition, inaptly used in relation to the facts pleaded, seemed to indicate any such theory, certainly neither the facts pleaded and proved nor the contention made in the briefs and upon the argument gave any color or weight to it.

4. **The question of discrimination, as to shippers, and as to the Railway.**

On page 105 of the second opinion are the following findings and conclusions:

"That in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expenses of similar delivery by the railway upon the rails of that carrier **are not subjecting the shippers** located on and served by the railway to **undue prejudice and disadvantage.**"

A. **The Commission's power to order absorptions.**

We have in a former part of this application, and in discussing a different assignment of error, shown wherein, as we respectfully contend, the first of the above conclusions is erroneous, the Commission having the lawful power and duty under the Act to prescribe

not only joint rates but divisions thereof, or absorptions of the railway's charge into them, so long as spur tracks are treated in general practice, as points of origin and destination; and without regard to the existence of "undue discrimination."

B. **Discrimination as to shippers.**

While the shippers are now represented by separate counsel, and this application is filed on behalf of the Railway, we deem it proper in view of our previous representation of their interests and our consequent familiarity with the record, to make certain statements in support of the shippers' contention that the Commission has erred in the second of the above conclusions.

The conclusion of the Commission upon the same point, as expressed in the first opinion, page 314, was:

"On the whole record we are of the opinion and find that **the action of defendants in canceling the said divisions and absorptions,** which have been for many years included in the St. Louis rates, **has subjected complainant shippers** and a considerable portion of the public of South St. Louis **to the payment** of unjust **and unreasonable transportation charges and to undue discrimination and disadvantage.** This has been accomplished by canceling **what were in effect joint rates or charges.**"

As between these two widely different conclusions, we respectfully contend that the one expressed in the first opinion was sound in law and fact, and that the later one, is erroneous.

The record facts before the Commission at the time of the second decision, relevant to this point, were substantially the same as at the time of the first decision.

"The practice of trunk lines of absorbing the switch-

ing charges" of the Terminal, and of the St. Louis Transfer Railway, and of each other, for terminal services in through movements was the same. The nature, component parts, and relation to St. Louis and to the trunk lines, of the Terminal Railroad Association and its subsidiaries, were in the original record. The comparative track and traffic situation and relation of the Iron Mountain, Transfer Railway, and Manufacturers Railway, to the shipping public of South St. Louis, and to each other, were all fully disclosed in that record by the map prepared and furnished by the Louisville & Nashville Railroad, introduced by it into the original record, and there supplemented by extensive cross-examination of witnesses concerning it.

Even the fact that the railway had no line haul and consequently no reciprocal switching to offer to the trunk lines as to traffic originating upon a line elsewhere than in St. Louis, appeared in the original record.

Therefore, we think that we are accurate in stating that the only factor present in the supplemental hearing which was not present in the original, was the argument that the **existence** or **non-existence of reciprocal switching relations** constituted a valid ground for discriminating between terminal services and charges of the Manufacturers Railway and those of other common carriers performing terminal services in St. Louis.

As we understand the second decision upon the question of discrimination, it is predicated entirely upon that new distinction.

We have shown in an earlier portion of this application, our reasons or grounds for contending that the Commission erred in its attitude upon the matter of reciprocal switching. We shall not repeat them here.

We have also stated elsewhere herein our grounds for contending that neither the Railway nor its shippers

can lawfully be discriminated against on the ground that the lines of the Terminal and its subsidiaries can or should be treated as a part of the trunk lines, rather than as separate carriers, or on the ground that the terminal facilities of one trunk line, can or should be treated as a part of the other trunk lines or of the Terminal. We shall not repeat those reasons here.

As to shippers: There remains only the question of fact, whether the refusal of the carriers to longer apply to the railroads and its shippers, the practice of absorbing into the St. Louis rate, the charges of the railway, does or does not cause its shippers undue and unfair disadvantage, as compared with their competitors located on the lines of the terminal or trunk lines in St. Louis.

Upon that question we respectfully submit there can be only one conclusion, viz.: That the refusal as evidenced by the cancellations, did cause them and their consignees an added burden of expense in addition to the St. Louis rate, and so created undue preference and discrimination against them.

C. **Discrimination as to the Railway.**

The Act (as shown previously herein) prohibits the defendants from discriminating against the railway in respect of interchange business.

The record shows that the ordinance rate of $2.00 per car is less than the operating cost. It is not a reasonable or remunerative compensation for the services performed by the railway.

To deny to the railway the right to divide with the trunk lines the revenue resulting from through and joint rate (the St. Louis rate) paid by shippers for the through service, merely because the railway has no line haul or reciprocal switching relations, is an unjust discrimination against the railway and in favor of its com-

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petitors, in that it deprives the railway of its only opportunity to receive reasonably compensatory rates on the greater part of its business, and it blocks the further growth of its business and lines in preventing new industries from settling near it.

Such discrimination is unlawful, and the second decision erred in not so holding.

5. **The Right to Reparation:**

On pages 107 and 108 of the second opinion, the Commission concludes and holds, that reparation cannot be awarded in this case to the railway as a common carrier, i. e., that the Commission has no power to award reparation to a carrier.

We respectfully submit that such conclusion is erroneous.

A. The first opinion correctly stated (page 316) that "The record contains statements from defendants to the effect that should the Commission **sustain the legality** of the divisions or absorptions, **reparation should be awarded** on the basis of the reasonable allowances determined by the Commission." And the opinion added: "When after further hearing and examination the **proper amounts** have been ascertained, reparation **will be awarded** on the basis of our final action respecting divisions or allowances."

The original record showed, Abstract, page 119, that a number of the lines were willing to have such rates as might be approved by the Commission "**made retroactive as of March 1, 1910.**"

So that the attitude of those defendants at least, upon this record, is that of **consenting to the jurisdiction** and of willingness to have such reparation awarded as of March 1, 1910, if the Commission should hold that it is proper and lawful for the charges of the Railway to be absorbed.

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B. Concerning the present attitude of the shippers upon the question of reparation, we do not speak since they are separately represented.

As to this Railway, the original record and complainant's briefs fully and frankly showed that the Railway was claiming reparation and was treating its claims against the various trunk lines for divisions, absorptions and allowances during the reparation period, as assets of the Railway, to be collected as a part of its revenue.

The Railway still contends for that right, and we respectfully submit that there is nothing in the Act which prohibits or prevents a carrier from claiming and being awarded reparation if injured by some other carrier's violation of its rights under the Act.

On the contrary the Act expressly gives such a remedy to a carrier. Thus Section 13 provides that "any common carrier" may complain "of anything done or omitted to be done by any common carrier to * * * the Act, in contravention of the provisions thereof."

By Section 8 a right of action for damages is granted to every "person" injured by any breach by a carrier of its duty under the Act. This would include another carrier.

Section 9 provides an alternative remedy either by complaint to the Commission or by suit.

And Section 16 provides that, after hearing and decision of any complaint under Section 13, if "**any party complainant** is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the same," etc.

So that the Act not only creates the right but provides the remedy. And the fact that complainants

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are usually shippers, is no reason why a carrier should not both claim and receive reparation.

The jurisdiction to award it certainly exists if the facts justify the claim.

In the case at bar, for instance, the carrier claims that it sustained money damages in the loss of revenue caused by the unlawful discrimination against it practiced by the defendants contrary to the Act.

And we respectfully contend that the Commission erred in holding that it has no power to hear any such complaint or to award damages under it.

6. **Certain Inaccuracies in the Facts Stated in the Second Opinion.**

We shall only mention two, thus:

(a) On page 99 of the opinion occurs the statement that the Railway does no **less than car load** business.

While the testimony so showed, it also showed that preparations for the doing of such business were under way, and the Commission must have overlooked the fact, of which it was advised prior to June 21, 1913, that beginning on February 16, 1913, the Railway has rendered a constantly increasing amount of less than car load service, amounting in some months to several hundred car loads per month.

(b) On pages 95 and 96, after describing the "middle zone" area, the opinion says: "The tracks within this area are leased by the brewery to the Railway."

That is partly correct, but substantially incorrect. All that the brewery lease covers is the trackage owned **by the brewery** within that area. This does not include any of the tracks on streets or alleys. It does include many yard and spur tracks, but none of them would be of any use or could be reached **except over the tracks owned by the Railway**. This situation was fully explained in our reply brief at the original hearing,

page 32 *et seq.*, and will not be repeated here. The apparent misconception of the actual conditions is substantial.

IV. Consequences Resulting from Compliance with the Decision.

We respectfully submit that the following consequences would result from a compliance with the second decision, and that they justify a reconsideration of the case, viz.:

1. The record shows, and it is a fact, that the Railway will **starve to death** if it receives no more than $2.00 per car on interchange business, the maximum rate which the decision indicates.

The Commission has overlooked the fact shown by the record, and explained in our briefs, that the ordinance rate, **less than compensatory** in amount, must be regarded as applicable only to local movements or to shipments arriving on a spent rate, and that the Railway could accept such a low ordinance rate because it would apply to only a small portion of its business, and because its obligation to perform even that small portion at such low rate must be regarded as continuing **compensation to the public** for the Railway's franchise use of the public's property. If the Railway's share of the revenue derived from through movements does not exceed $2.00 per car, it cannot live.

An order of the Commission pursuant to the decision, and refusing to permit the Railway to receive reasonable absorptions, allowances or divisions of the St. Louis rate, will cause a confiscation of its property, and will violate the fourteenth amendment to the Federal Constitution.

2. An order of the Commission pursuant to the second opinion, will cause and already has caused, the

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trunk lines to again discriminate against the Railway and against shippers on its line, by cancelling all tariffs providing for divisions and allowances.

The effect of the decision has thus been to create unjust discriminations and undue preferences, contrary to the Act to Regulate Commerce.

It has also been to deny to the Railway and to its shippers the equal protection of the laws, in further violation of the Fourteenth Amendment.

3. Although the Commission declined (p. 110) "to discuss the question whether the Terminal Railroad Association is a monopoly," it did note the fact (p. 164) that the Manufacturers Railway is "endeavoring to construct an extensive terminal system **to rival**" the Terminal Railroad Association.

We understand that one of the fundamental purposes of the Act, in the interest of the public, is to foster competition and preserve equality between common carriers.

And we respectfully call the attention of the Commission to the fact that such purpose will be completely frustrated by an order if made pursuant to the decision, because its inevitable result would be to cripple the Railway, retard its growth, discourage industries from settling upon it, and competitive business from using it, put a prohibitive burden upon its use for through shipments, and, in short, to invite it to sell out for the benefit of its rival.

V. We are informed that in the case of other carriers whose status and charges have been or are being investigated by the Commission, and even in the case of carriers having little claims to the status of common carriers under the Act, the Commission has, properly, we think, given them the benefit of doubts and has permitted them to live during the period of investigation,

by receiving reasonable allowances from the trunk lines out of the joint rates, for terminal transportation services.

We respectfully ask that like consideration be shown the railway in the case at bar, and to that end, that the new tariffs recently filed be suspended pending the final determination of this case, and if any of them have become effective, that the Commission make known to the trunk lines that it will permit those of them who are willing to do so, to resume paying divisions and allowances to the Railway pending final decision and order in this case.

Respectfully submitted,

NAGEL & KIRBY,
Of Counsel,
Attorneys for Complainant, Manufacturers Railway Company.

Application of Anheuser-Busch Brewing Association, Stecher Cooperage Works, Independent Breweries Company, Bradbury Marble Company, St. Louis Basket & Box Company, Fidel-Ganahl Lumber Company, St. Louis Cooperage Company and Western Foundry and Sash Weight Company for Rehearing.

The application for rehearing in this case, made by the Manufacturers Railway Company, presents the case comprehensively for that company, and most, if not all, of what is urged therein applies in behalf of the companies who are shippers over the lines of the Railway Company and are also desirous of a rehearing and hereby petition therefor.

They beg to submit, in addition to what has been

said on behalf of the Manufacturers Railway, some suggestions from the standpoint of their distinctive interest as shippers.

Prior to March 1, 1910, the railroad companies at St. Louis brought in freight from the various points of origin and delivered it to the consignees at their various points of receiving freight upon the terminal lines in the city, and conversely received out freight at the various points of delivery on the terminal lines in the city and carried it to destination, and this was done for the through St. Louis rate, whether the delivering or receiving point was on the rails of the trunk line carrier or was on the terminal tracks of another trunk line carrier or on the lines of a carrier doing a distinctive terminal business.

The particular form of the arrangement under which this was done, whether the trunk line carrier absorbed the terminal charge or whether there was a division of the through rate between the trunk line carrier and the terminal carrier, did not concern the shipper. The fact remained that his entire transportation service was rendered for him at the through rate.

The facts above stated were true as to all shippers in St. Louis. The through St. Louis rate in one way or another included compensation for the service of the terminal carrier.

December 31, 1909, the trunk line carriers gave notice that after March 1, 1910, no allowance would be made in any form out of the through rate to the Manufacturers Railway for any service rendered by it on either in or out shipments, and as a consequence the shippers using the Manufacturers Railway must for the entire transportation service rendered to them, pay the through St. Louis rate and, in addition thereto, the

charge for terminal service rendered by the Manufacturers Railway. We are stating matters according to their practical effect.

Like notice, it is said, was given with respect to shipments to and from some other terminal lines, but the inquiry in this case has not extended to them and so we have not to consider them in this petition.

No such notice was given and no such change was proposed as to shipments to or from points on the lines of the Terminal Railroad Association of St. Louis or points on the terminals of the trunk line carriers in St. Louis.

This proceeding was instituted to prevent the proposed change and to secure a continuance of the existing equality of treatment between the shippers using the lines of the Manufacturers Railway and those using the facilities of the Terminal Railroad Association, or of the trunk line carriers.

The existing system of equal treatment was not compelled by any order of this Commission, but had been voluntarily established by the railroad companies, and the proposed change was not responsive to any such order, but was on the initiative of the carriers.

On the first hearing the objection to the existing system was substantially that the Manufacturers Railway Company was not a common carrier, but a mere plant facility of one of the shippers, the Anheuser-Busch Brewing Association.

As to this the Commission said in its first report, June 21, 1911, p. 313, that:

> "In view of all the facts, circumstances and conditions bearing upon this question, we have no doubt that the Manufacturers Railway Company is in fact a common carrier at common law, notwithstanding any modification thereof, and there-

> fore within the provisions of the first section of the act to regulate commerce, and that the payment to it of a reasonable and just portion of the St. Louis rates for the terminal services rendered by it is not unlawful."

This was a complete justification of the existing mode of doing business.

As to the change proposed by the trunk line carriers, the Commission said, pp. 314 and 315:

> "On the whole record we are of the opinion and find that the action of defendants in canceling the said divisions and absorptions, which have been for many years included in the St. Louis rates, has subjected complainant shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges and to undue discrimination and disadvantage. This has been accomplished by canceling what were in effect joint rates or charges and leaving in effect what are found to be unjust, unreasonable, and discriminatory charges."

This, so far as concerned the shippers, decided the case in its entirety. There remained only a question in which they were not concerned, viz: the compensation to be paid by the trunk line carrier to the Manufacturers Railway Company, or what comes to the same thing, the division of the joint rate between the two.

Ordinarily this question might be left to the agreement of the parties concerned, if they could agree, but in the present case individuals interested very largely in the Manufacturers Railway Company were also interested very largely in the Anheuser-Busch Brewing Association. In fact, the dominant individual interests in each were the same. And the shipments of the

Brewing Association constituted the larger portion of the shipments over the Manufacturers Railway. So the matter in question could not be left entirely to the agreement of the parties, as the allowance for terminal service or the division of the through rate might be made the cover for discriminating rates to the Brewing Association.

The greater number of shippers, and they contributed a substantial volume to the business of the Manufacturers Railway, were not interested either in the Railway or in the Brewing Association, and a number of the shippers are competitors of the Brewing Association.

On the further hearing had for the purpose stated above, the report and finding of the Commission upon the first hearing was assailed by one of the trunk line carriers.

No change in the physical facts or in the material conditions affecting the service of transportation rendered to the shippers was disclosed, unless it be that the continual increase of its terminal facilities by the Manufacturers Railway Company, and the continual increase of the volume and proportion of the business using those facilities, furnished by shippers not interested in any proprietary way in either the Brewing Association or the Manufacturers Railway, constitute such a change.

In the first report the Commission says as to this phase of the case that "we have carefully considered these features of the controversy and note that the manager of the Terminal Railroad Association (of St. Louis) testified that the matter of the cancellation of these tariffs received the attention of his Association immediately following the publication in the St. Louis press of plans for the further development of the prop-

erty of the Manufacturers Railway Company giving it outlets to the outside world independent of the Terminal Railroad Association, its proprietary or subsidiary lines" (p. 314).

The shippers insist that so far as they are concerned, the Manufacturers Railway should not be held to be any less a bona fide terminal carrier, because in fact it makes itself more and more so. And the Commission was clearly of this opinion on the first hearing.

After the further hearing and in its second report, the Commission found as to the character of the Manufacturers Railway that it "is a common carrier subject to the Act (Interstate Commerce) as held in our previous report," but the Commission further finds, pp. 105 and 106 of the report of June 21, 1913, that:

> "The payments formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered to the trunk lines and were in no sense divisions of joint rates as for services rendered for the shippers served by their railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expenses of similar delivery by the railway upon the rails of that carrier are not subjecting the shippers located on and served by the railway to undue prejudice and disadvantage; that therefore the only lawful order the Commission can make is in the establishment of joint rates if the conditions are such as to warrant that action; that under joint rates so prescribed that part of the service performed by the railway would be

in the contemplation of the act a service performed for the shipper to be paid for by the shipper and could not be construed by the Commission to be a service rendered for the trunk lines, the expense of which could be required by the Commission's order to be borne by the trunk lines; that the rates of the trunk lines not being shown to be unreasonable in themselves, such joint rates with the railway must therefore necessarily be in excess of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis."

This ruling the shippers respectfully submit discriminates against them and in favor of shippers located on the lines of the Terminal Railroad Association and on the terminals of trunk line carriers.

The justification for the ruling so far as found in the quotation from the report which we have made is, we submit, purely formal and verbal. It is not based upon material conditions or physical facts.

1. It is said that the payments formerly made to the Manufacturers Railway were "absorptions," while payments to be made under the order of the Commission sought by the shippers would be part of a "joint rate."

2. That the services rendered under the "absorption" were services rendered to the trunk line carrier, while the services rendered under the "joint rate" would be services rendered the shipper.

3. That the "absorption" was the voluntary act of the trunk line carrier, while the "joint rate" would be under compulsion of the Commission.

These are all distinctions, so far as the shippers are concerned, and not differences. They do not arise out

of material conditions or physical facts and so are purely metaphysical.

What they are made to justify is however more than a distinction and is a very substantial difference.

They make the shipper on the Manufacturers Railway pay more for the same transportation service than he did before, and more than competitors in St. Louis pay for a like service. They deny to him the benefit of the through St. Louis rate.

Absorption and Joint Rate.

Whether the shipper gets the through rate by virtue of "absorption" or of a "joint rate" is all one to him. He pays in either case the same sum for the same service. It may involve a difference in accounting or bookkeeping to the carriers, but nothing more, and no such difference can justify a difference in the treatment of shippers.

Service to Shipper and Service to Carrier.

So, too, the question as to whether the terminal service is rendered to the trunk line carrier or to the shipper is purely formal. There is no pretense that it is physically different. It is a haul to or from the same point on the terminal line over the same rails, by the same engine and by the same crew.

The shipper is interested in the entire transportation and that is, and was before, as much as now, a service rendered to him.

The trunk line carrier is interested in having freight brought to its lines, and the bringing of freight to its rails is now as much as it was before a service rendered to it.

The terminal carrier is interested in rendering the

terminal service and the bringing in freight to it by the trunk line carriers is a service to it and was under the old arrangement, and in like manner the terminal carrier is served when the shipper delivers to it his out freights.

The question of who is served depends entirely upon the standpoint from which the inquiry is made. Ask it from the shipper's standpoint and the answer is that both carriers serve him. From the standpoint of the trunk line, both shipper and terminal carrier serve the trunk line, and again, getting into the place of the terminal carrier, it is served by both the trunk line and the shipper.

The transaction under inquiry is in every case the same. If it is outbound, the shipper takes it to the terminal, the terminal to the trunk line and the trunk line to destination. If it is inbound freight, the transaction begins with the trunk line and ends with the consignee. In the one case the shipper sends, and in the other he receives, and in each case the agencies of sending and receiving are the same.

We can resolve the transaction into its elements very much as we please, and at pleasure change the relations of the elements to each other, but they remain in fact "as unto the bow the cord is, * * * useless each without the other."

Discrimination in Fact Against the Shipper.

The only difference, in fact, to be discovered in the "before" and "after" representations of the transactions, is the increased charge to the shipper. That is not formal or metaphysical, but a circumstance of fact and of painful significance.

The distinctions as to the service "before" and

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"after" grow out of this discrimination as to the charge for service. Remove the discrimination and the distinctions disappear.

In immediate effect indeed, only the shipper is concerned in this controversy. That the trunk line carrier gets the full through rate to St. Louis, does not as to any one transaction concern the Manufacturers Railway so long as it receives proper compensation for its terminal service. The Manufacturers Railway is interested through the effect of the discrimination upon the shippers. They cannot expand their business and other industries will not be developed upon the lines of the railway if this discrimination is continued.

So this is a shippers' fight, and the principles upon which it is determined will be applicable in cases where both carriers, the trunk line and the terminal will be upon the same side.

The utmost ingenuity of casuistry will always be exerted by carriers who maintain discriminations in charge, to discover distinctions in service to justify them.

A glaring example may be found in the sugar shipments from New York to the West, a subject with which this Commission has dealt and which is now under submission to the Supreme Court of the United States.

The Arbuckle Bros., refining sugar on Long Island, lighter their sugar to the Jersey shores and there deliver it to the railroad companies, who take it to the West. Out of the New York rate the railroad companies make to Arbuckle Bros. a very substantial allowance for the lighterage service.

The Federal Sugar Company, refining sugar at Yonkers, lighters its sugar to the same Jersey shores, to the same places on those shores, and delivers it to the

same railroad companies who take it to the same points in the West for the same New York rate, but without any allowance to the Federal company for the lighterage service.

The physical facts as to the service rendered by the railroad companies in the transportation of the sugar are the same as to the two shippers. There is no difference that is tangible to any sense. You can neither see nor feel nor touch nor taste nor smell any difference in what the railroad company does in the way of transportation.

The difference is solely in the charge. The Federal Company pays more for the same service.

Having made the discrimination, the carriers were fertile in making distinctions. They could "distinguish and divide a hair 'twixt south and southwest side." A free lighterage limit made by themselves and which they could change at will, an imaginary line that presented no physical barriers of any kind, distinguished between the service rendered to the Arbuckle Bros. and the Federal Company. But always the service was in fact the same, hauling sugar from the same place on the Jersey shore to the same place in the West.

But the Interstate Commerce Act deals with material conditions, with substance and not with form. Its purpose is to protect shippers against discriminations in fact, and where these exist, the authority of the Commission is properly invoked and should be exerted.

Compulsory and Voluntary Action.

That the "absorption" was the voluntary act of the trunk line companies, while the "joint rate" is the compulsion of the Commission, does not, we submit, affect the matter.

It may be conceded that there are things related to transportation which a common carrier may do if it will, but which it cannot be compelled to do.

It is insisted, however, that whatever a common carrier may do, if it will, it must do, if that be necessary to prevent actual discrimination by it. It cannot as it pleases, exercise or not such voluntary powers and so favor one shipper as against another.

The positive provisions of the Interstate Commerce Act preclude the existence of any power on the part of the carrier to discriminate and so preclude the use of admitted powers in such way as to accomplish discrimination.

Reciprocal Relations Between the Trunk Lines.

There are considerations of a material nature adverted to by the Commission in its last report which are suggested rather than asserted as possibly excusing the discrimination of which we complain.

These are the reciprocal relations existing between the trunk line carriers through the terminals owned by each and their proprietorship of the Terminal Railroad Association of St. Louis.

But as to this, it must be considered that the relations of the various trunk lines are very far from being the same or anything near the same.

Some of the trunk lines have very extensive terminals of their own and others have practically none at all and are dependent altogether on the Terminal Railroad Association of St. Louis. And some of the trunk lines are owners of the Terminal Railroad Association and others are not.

The reciprocal relations suggested do not exist so far as their own terminals are concerned between com-

panies having extensive terminals and companies having none.

And even as between companies, each having terminals in the city, there is nothing to show that one renders terminal service for another on any basis of reciprocity, that is that each gives to the other the benefit of its terminal service.

The service in any case is charged for by the company rendering it and it is paid according to the amount of such service rendered by it. Company A does not handle a thousand cars for Company B, simply because Company B handles a hundred cars for it.

Reciprocity here is a mere word. Each company which has terminal facilities and uses them as a terminal carrier of shipments coming in over other lines is paid for that service and is paid for it out of the through rate, and the more of such terminal service it renders, the more it is paid. Where then is the reciprocity? And why should any other terminal carrier rendering the same service, even though it does not own a trunk line, be denied compensation for that service and why as to the shipper, should not that compensation be absorbed?

As to any single transaction it is impossible to discover a reason for absorption in the one case and not in the other. The trunk line brings it in and so far as it is concerned, either one of two companies can render the terminal service required. Turning it over to one it absorbs the terminal charge and turning it over to the other it refuses to do so. Surely this is discrimination!

Does the proprietary interest of the trunk lines in the Terminal Railroad Association create a condition justifying what would otherwise be a discrimination?

For one thing, all the trunk line carriers involved

are not proprietors and so the protecting blanket is not broad enough to cover the case.

Terminal Railroad Association Must Be an Independent Institution.

Passing this, however, we submit that for every purpose of this proceeding, and even if every one of the trunk line carriers were an equal proprietor of the Terminal Railroad Association, that Association must be considered as an independent institution as much as the Manufacturers Railway Company.

In support of our view we cite the case of the United States vs. Terminal Railroad Association, 224 U. S. 383. This case seems not to have been considered as bearing upon the present proceeding.

We do not propose to urge matters of form in this connection.

The Terminal Railroad Association is to be dealt with as independent of the trunk lines, not only because it is not owned in equal share by all of them, but because it is a different institution from them, performing an essentially different function.

The statutes of Missouri make elaborate provision for Terminal Companies which may be organized either by individuals or by railroad companies, and this "in order to facilitate the public convenience and safety in the transmission of goods and passengers in and in the neighborhood of large cities from one railroad to another and to prevent the unnecessary expense and inconvenience and loss attending the accumulation of a number of stations." (Section 3215, R. S. of Mo., 1909.) Whether the terminal company be organized by individuals or by railroad companies

makes and can make no difference, as to the right either of carriers or of shippers to the use of the facilities possessed by the terminal company.

That a terminal railway is a distinctive thing was recognized by the Supreme Court of Missouri in the case of State vs. Terminal Railroad Association, 182 Mo. 284. The Attorney General in that case attacked the scheme of the Terminal Railroad Association as in violation of Section 17, Article 12, of the Constitution of Missouri, which prohibits the combination or consolidation of parallel or competing lines of railroad. The Supreme Court of Missouri did not find in that case that the terminal lines originally independent of each other, which were brought into the present terminal system, were not parallel and competing, but accepting them as such held that these lines were not railroads within the meaning of the constitutional provision. This distinction was based upon the essential difference in the function performed by a trunk line in bringing a shipment into the city and that of the terminal company in making delivery to the shipper on its lines. And this reasoning of the Supreme Court of Missouri was approved by the Supreme Court of the United States in the case referred to, and because of the nature of the function performed by the Terminal Railroad Association, it was held by the Supreme Court of the United States that the combination of the terminal lines, theretofore independent, under the ownership of the Terminal Railroad Association would not, so far as the mere matter of combination was concerned, be a monopoly in violation of the Sherman Act.

It was determined, however, that there were monopolistic and illegal features in the existing terminal scheme and these must be eliminated or the combina-

tion must be dissolved. And the objectionable features of the scheme grew out of the attempt to deal with the Terminal Railroad Association as a means of reciprocal relations between the proprietary companies.

The Commission in its second report (p. 105) says it is argued by complainant that the Terminal Association is a separate corporation from the trunk lines, and it comments that "this is true." The Commission proceeds to show the interests which the trunk lines have in common through the terminal system and finds some excuse in these common interests for their course of dealing with the Manufacturers Railway, "which by its own statement, is endeavoring to construct an extensive terminal system to rival the trunk lines' own facilities as represented in the Terminal Association" (p. 104).

If the Terminal Railroad Association is an independent institution, why should the trunk lines discriminate in its favor?

The Supreme Court of the United States, in the case cited, speaking of the terminal system as it found it in the record, said that it **was not** an independent institution, and said further, "the fact that the Terminal Company is not an independent corporation at all is of the utmost significance" (p. 398).

The Court found that the Terminal Association was not an independent institution in fact, but if it would continue to exist **it must become one.** The fact that it was not independent, that it was the creature of the proprietary companies and subject to their will, and the fact that through their proprietary interest, the proprietary companies were at an advantage in the St. Louis situation, made the existing arrangement an offense against the Sherman law.

Proprietary Lines Can Have No Special Privileges in Terminal Railroad Association.

The Terminal Association was owned by fourteen railroad companies, but twenty-four companies did a carrier's business with St. Louis, and other roads might be built in from time to time. If the proprietary companies had any peculiar rights in respect of terminal service as against any other companies, then the Terminal Association was not an independent institution and was a combination in violation of the Sherman Act. And the Court found that such rights were secured by a provision in the scheme that other companies could be admitted to the terminal arrangement only by unanimous consent of the existing members, and the decretal order required "such a modification of the agreement between the Terminal Company and the proprietary companies as shall constitute the former the bona fide agent and servant of every railroad line which shall use its facilities" (224 U. S. 410).

Peculiar rights or special privileges as incident to the reciprocal relations of proprietorship in the Terminal Association are absolutely precluded by this decision.

The Terminal Association is within the law not as a reciprocal terminal arrangement between the proprietary companies, serving their distinctive interest and giving to them an advantage over their competitors, but only as it has been reformed in its constitution, made an independent institution in fact and as such the equal and impartial agent and servant of all who have occasion for the use of its services. No discrimination even in favor of owners.

Proprietary Lines May Not Discriminate as to Terminals.

Now if an arrangement which enabled the proprietary companies to use the facilities of the Terminal Association to their peculiar advantage as trunk line carriers was a combination in violation of the Sherman law, would not an arrangement which enabled those same companies to use their trunk lines to their peculiar advantage as proprietors of the Terminal Association be equally a combination in violation of the Sherman law?

This must be so. The Terminal Association is not an independent institution if the proprietary trunk lines are bound to it any more than if it is bound to those lines. The effect of the decision is that the trunk lines may combine for the mere extension and amplification of facilities, but not for any advantage in the use of the facilities **secured by the combination** as against any existing or potential competitor. And this limitation upon the extent of lawful combination applies as well to terminal facilities as to trunk lines.

This is not a matter of inference or argument, but is expressly decided in the case cited. The Court found the Terminal arrangement to be in violation of the Sherman law also because "by another clause in the agreement the proprietary companies obligated themselves to forever use the facilities of the Terminal Company for all business destined to cross the river" (224 U. S., p. 400). "This," the Court said, "would amount to guaranteeing against any competitive system since the companies to the agreement now control about one-third of the railroad mileage of the United States." And so provision was made in the decretal order for "eliminating from the present agreement

between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company" (224 U. S. 411).

The two decretal provisions we have quoted secure and were intended to secure the complete independence in fact of the Terminal Association and a free field in St. Louis for new trunk lines and for new terminal lines.

But of what avail is it to abrogate and condemn the agreement of the proprietary companies for the exclusive use of the facilities of the Terminal Association, if those same companies shall be permitted to use other terminal facilities only under adversely discriminating conditions? The Court did not have the Manufacturers Railway in mind, for there was nothing concerning it in the record. It had in mind the general shipping public of St. Louis. The decision is a declaration of public law and public policy broad in its terms, for the benefit of the City of St. Louis and all its varied interests, transportation, commercial and industrial, and makes provision against any monopolization of transportation facilities, either trunk line or terminal.

This provision of the decree is operative as to all of the proprietary companies and as to each of them. One of them may not any more than all of them decline relations with any other terminal company than the Terminal Association of St. Louis, and as discrimination is practical denial it may not discriminate.

Here, then, is the decision of the Supreme Court of the United States holding first that no trunk line having access thereto can be excluded from the use upon equal terms of the facilities of the Terminal Associa-

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tion, and conversely, that no terminal company can be excluded from use by any of the trunk lines.

You may, says the Supreme Court, in effect, to the proprietary companies and to the Terminal Association, combine the terminals of St. Louis in one system, but it is upon the express conditions (1) that the facilities of the system shall not be monopolized by the proprietors and that the proprietors shall have no advantages over others in their use, and (2) that you do not by your combination prevent or hinder the full and free development and increase of terminal facilities by others if so be it others choose to undertake it. The institution created by the combination of the trunk line companies must be absolutely independent in fact and otherwise the combination is illegal.

This proceeding is directed against the cancellation of tariffs which gave to the shippers located on the Manufacturers Railway the full benefit of the through St. Louis rate. The Commission found in its first report that the matter of the cancellation of these tariffs received the attention of the Terminal Association "immediately following the publication in the St. Louis press of plans for the further development of the property of the Manufacturers Railway giving it outlets to the outside world independent of the Terminal Railroad Association, its proprietary or subsidiary lines" (p. 314).

The cancellation of these tariffs will serve to thwart, hinder, make onerous and discourage what the Supreme Court said it was against public law and public policy to prevent or deny.

The case as it now stands is not primarily or principally the case of the Manufacturers Railway Company, but is the case of the entire shipping public of St. Louis. The conclusion of the Commission is not based

upon tap line or plant facility considerations, and as to shippers not interested as proprietors in either the Manufacturers Railway Company or the Brewing Association could not be. If the reciprocal relations of the trunk line carriers through terminal facilities owned and used by them in common justify discrimination against the Manufacturers' Railway Association, they justify equally like discrimination against any other terminal system that may be projected at any time hereafter by anyone whomsoever, and every such enterprise is predestined to be strangled at its birth in the coils of those relations.

When what is thus said to inhere as a right in these reciprocal relations was set down in explicit terms as an obligation of the contract constituting those relations, the Supreme Court of the United States denounced it as a public wrong and as vitiating the entire arrangement of which it was a part unless it was unqualifiedly abrogated.

LEHMANN & LEHMANN,
Attorneys for Complainant Shippers.

The three Reports of the Commission are printed in full as exhibits to its answer herein, and are therefore not inserted in this Abstract.

This Abstract does not include an abstract of the evidence introduced before the Commission in its cause, No. 3151, because copies will be filed in this cause of the two printed Abstracts of such evidence which were filed with the Commission, and which will serve to present that record in this case in the same form in which it was presented to the Commission.

The order made in Case 3151 is set out in full in the Petition here, and is admitted in the Answers.

Counsel for petitioners also offered the "record proper"; that is the pleadings, decrees, and also the mandates of the Supreme Court in the case of **The United States of America, complainant,** vs. **the Terminal Railroad Association of St. Louis, et al., defendants,** now pending in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, an appeal from the last decree which is now pending in the Supreme Court of the United States.

Governor Folk: That is objected to as having no connection whatever with this case, and utterly irrelevant and immaterial to the determination of the issues involved in this proceeding.

It was stipulated that counsel for the Government may file his objections before or at the time of the argument.

From the record proper in said case of the United States of America, complainant, vs. the Terminal Railroad Association of St. Louis et al., defendants, in equity No. 5250, in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, the following portions of said record, disclosing the nature of the issues, and of the decrees rendered therein, are here abstracted.

THE PETITION.

The complainant was the United States of America. The defendants were the Terminal Railroad Association of St. Louis, the St. Louis Merchants' Bridge Terminal Railway Company, the Wiggins Ferry Company, the St. Louis Bridge Company, the

St. Louis Merchants' Bridge Company, the Missouri, Kansas & Texas Railway Company, the St. Louis & San Francisco Railway Company, the Chicago & Alton Railway Company, the Baltimore & Ohio Southwestern Railroad Company, the Illinois Central Railroad Company, the St. Louis, Iron Mountain & Southern Railway Company, the Chicago, Burlington & Quincy Railway Company, the St. Louis, Vandalia & Terre Haute Railroad Company, the Wabash Railroad Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Louisville & Nashville Railroad Company, the Southern Railway Company, the Chicago, Rock Island & Pacific Railway Company, the Missouri Pacific Railway Company, the Central Trust Company of New York, and eighteen individuals.

The petition alleged, in substance:

I. The incorporation of the defendant carriers under the laws of various states; that the defendants (except said Trust Company and individuals) were common carriers employed in the transportation of freight and passengers in interstate commerce; that the St. Louis Merchants' Bridge, and the St. Louis Bridge (owned by the defendant carriers) are, and have been since 1889, the only two bridges across the Mississippi River, between Illinois and Missouri, at St. Louis; that one of said bridges was erected by the Illinois & St. Louis Bridge Company, and is now owned by the St. Louis Bridge Company, and was opened for business in 1874, and is known as the "Eads Bridge," having its western approach at the foot of Washington avenue in the City of St. Louis, and its eastern terminus in East St. Louis, Illinois; that it has a double track standard gauge railroad on its lower part and immediately over the same a wagon-way, sidewalk for pedestrians and double track electric street rail-

way line, the wagon-way being reached from the street surface of Washington avenue, and the railroad tracks by a tunnel extending under the business district of the City of St. Louis; that St. Louis Merchants' Bridge, called the "Merchants' Bridge," has its western approach at the foot of Hall street in the City of St. Louis, Missouri, its eastern terminus in the village of Venice, in the State of Illinois, and was erected and opened for business on June 1, 1890.

II. The defendants, the Terminal Railroad Association of St. Louis and the Merchants' Bridge Terminal Railway Company, on and prior to August 17, 1893, owned, controlled and operated two separate, parallel, independent and competing lines of railroad, running east and west in the States of Missouri and Illinois, and across the Mississippi River by means of said two bridges and into the streets of Missouri and Illinois.

III. The defendants, Terminal Railroad Association of St. Louis, the Merchants' Bridge Terminal Railway Company and the Wiggins Ferry Company, control and operate all of the lines of railway and means of transportation for passengers and interstate and foreign freight at St. Louis, Missouri, East St. Louis, East Carondelet, Madison and Granite City, Illinois.

IV. That on July 3, 1889, the Terminal Railroad Association was organized under Missouri laws with a capital stock of seven millions of dollars, owned by the Wabash Railroad Company, the Missouri Pacific Railway Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Louisville & Nashville Railway Company, the Ohio & Mississippi Railroad Company and the St. Louis, Iron Mountain & Southern Railway Company; that subsequently the capital stock

of the Terminal Railroad Association was increased to fifty millions of dollars, and that 28,820 shares of stock at one hundred dollars par value each, have been issued and are now outstanding; that after August 17, 1893, other railroad companies purchased shares of stock in the Terminal Railroad Association, and at this time the capital stock is owned and held in equal amounts by the following fourteen railroad corporations: Missouri, Kansas & Texas Railway Company, Chicago & Alton Railway Company, St. Louis & San Francisco Railway Company, Baltimore & Ohio Southwestern Railway Company, Illinois Central Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Chicago, Burlington & Quincy Railway Company, St. Louis, Vandalia & Terre Haute Railroad Company, Wabash Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Louisville & Nashville Railroad Company, Southern Railway Company, Chicago, Rock Island & Pacific Railway Company, and Missouri Pacific Railway Company.

That of the eighteen individuals named in the petition as holding two shares of stock each, fourteen held such shares as representatives of the said fourteen railroad companies owning capital stock, and the other four individuals, holding two shares each, hold the same in trust for the Terminal Railroad Association, either as officials thereof or as inspectors of election.

That said fourteen lines of railroad constitute the principal trunk lines entering the City of St. Louis and the City of East St. Louis, Illinois, from either side of the Mississippi River and from all portions of the continent, and control and conduct the interstate commerce, which is conducted across the river at the City of East St. Louis.

That the Terminal Railroad Association was cre-

ated by the consolidation of and succeeded to the property and franchises of the Union Railway & Transit Company and the Terminal Railroad of St. Louis, through an issue to the shareholders of said last two named companies of one share of the capital stock of the Terminal Railroad Association of St. Louis for each share owned by them in said primary companies; that at the time said consolidation occurred each of said primary companies owned a complete railroad, and that said roads were so connected as to form one continuous line of railroad running in the same general direction through the streets of Missouri and Illinois, and across the Mississippi River on the Eads Bridge.

That by this consolidation there was brought under the control of the Terminal Railroad Association the properties of the Eads Bridge, the Tunnel Railroad Company of St. Louis, the Union Railway & Transit Company, the Terminal Railroad of St. Louis, Missouri, and the Terminal Railroad of East St. Louis, Illinois, all of which were engaged in interstate commerce, and all of which properties said Terminal Railroad Association took possession, began to operate and still operates in interstate commerce; that the railroad companies last enumerated were so consolidated under the name of the Terminal Railroad Association of St. Louis, and that their lines of railroad thus consolidated were operated in the states of Illinois and Missouri, and were connected with all the main lines of railway entering the cities of St. Louis, Missouri, East St. Louis, Madison, Granite City and East Carondelet, Illinois; that on July 3, 1889, and prior and subsequent thereto, and now, the Terminal Railroad Association of St. Louis has tracks and lines of railroad and operates the same, beginning

at the west end of the Eads Bridge in St. Louis, Missouri, thence through various portions of the city to points where connections are made with the tracks, lines and terminals of the trunk lines entering St. Louis from the north, south, west and southwest; also from the west end of the Eads Bridge across said bridge and the Mississippi River into East St. Louis and East Carondelet, Illinois, where its tracks connect with the lines and terminals of the trunk lines extending from East St. Louis north and east; that said Terminal Railroad Association also operates and controls switches, spurs, branches and other facilities to and from various public and private warehouses, depots, factories, etc., in the cities of St. Louis, Missouri, East St. Louis, East Carondelet, Madison and Granite City, Illinois, all of which are so connected with the tracks of the Terminal Railroad Association as to enable it to transport and switch the products to and from the terminals of the various trunk lines entering said cities and so as to enable said Terminal Railroad Association, as an interstate common carrier, to handle all freight moving to or from said cities.

V. That the St. Louis Merchants Bridge Terminal Railway Company was organized in August, 1887, under Missouri laws, and its charter amended in 1893; that it built a standard gauge railroad from the Illinois shore over the Merchants Bridge to the Union Station in St. Louis, Missouri, and owned and operated said road on August 17, 1893; that the Madison, Illinois, and St. Louis Railroad Company was organized under the laws of Illinois, and built and operated a railroad from the east end of the Merchants Bridge to Granite City, Illinois, four and one-half miles, for the purpose of being operated and controlled by the

St. Louis Merchants Bridge Terminal Railway Company; and that on August 17, 1893, it was controlled and operated by said St. Louis Merchants Bridge Terminal Railway Company.

That the St. Louis Terminal Railway Company was organized under Missouri laws to construct and operate a railroad from a point on the line of the St. Louis Merchants Bridge Terminal Railway Company, near the western approach of the Merchants Bridge in the State of Missouri, north and westerly through the city and county of St. Louis, Missouri; that it built about twenty miles of road and leased the same to the St. Louis Merchants Bridge Terminal Railway Company, which controlled and operated said St. Louis Terminal Railway Company on August 17, 1893, and theretofore.

That the East St. Louis Terminal Railway Company was organized under Illinois laws in 1887, and built and operated a railroad from the eastern end of the Merchants' Bridge to connect with other railroad lines in Illinois, and on August 17, 1893, and theretofore, was controlled and operated by the St. Louis Merchants Bridge Terminal Railway Company.

That the St. Louis Transfer Railway Company was a corporation organized under Missouri laws and built and operated a railway from Grand avenue to Arsenal street in the City of St. Louis, Missouri, having a trackage of about forty miles; that on August 17, 1893, and theretofore, said corporation was controlled and operated by the Wiggins' Ferry Company.

That the Illinois Transfer Railway Company is a corporation organized under Illinois laws to make connection with the Merchants Bridge and the tracks of the Merchants Bridge Terminal Railway Company, in the State of Illinois.

That the Granite City and Madison Belt Railway Company is an Illinois corporation organized to make connection with the Merchants Bridge and the various railway lines entering Granite City, Madison and East St. Louis, Illinois, and that said Illinois Transfer Railway Company and Granite City and Madison Belt Railway Company were, on August 17, 1893, and prior thereto, controlled and operated by the St. Louis Merchants Bridge Terminal Railway Company.

That the St. Louis Belt & Terminal Railway Company was a corporation organized to, and did, build a railroad in the city and county of St. Louis, Missouri; and that its lines on August 17, 1893, and prior thereto, were controlled and operated by the St. Louis Merchants Terminal Railway Company.

That the stock of the Merchants Bridge had been previous to the building of said bridge, and was on August 17, 1893, owned by the St. Louis Merchants Bridge Terminal Railway Company.

That in 1889, the St. Louis Merchants Bridge Company leased its bridge for forty years to the St. Louis Merchants Bridge Terminal Railway Company, but later cancelled said lease and made a similar lease for forty years to the Madison, Illinois and St. Louis Railroad Company, which corporation is controlled by the St. Louis Merchants Bridge Terminal Railway Company.

That on August 17, 1893, and prior thereto, and at the time of the acts complained of, the St. Louis Merchants Bridge Terminal Railway Company owned and operated a railroad located, in part, as beginning at the Union Station in the City of St. Louis, Missouri, thence over, along and across various streets and various portions of the City of St. Louis, across the Mississippi River over the Merchants Bridge, into Illinois,

to Venice, East St. Louis, Madison and Granite City, where its line of road connects with the Illinois Transfer Railroad, East St. Louis Connecting Railway Company, East St. Louis Belt Railway, East St. Louis & Carondelet Railway Company, and all the main lines of railway leading from East St. Louis, Granite City, Madison, and other points in Illinois, opposite St. Louis, Missouri, to the Great Lakes and Atlantic Coast; also extending from the west end of the Merchants Bridge westerly and southerly through the City of St. Louis, Missouri, intersecting and connecting with the tracks and terminals of all the trunk lines extending from St. Louis westward, northward and southwestward; that on August 17, 1893, and prior thereto, said Merchants Bridge Terminal Railway Company also owned, controlled and operated the side tracks, branches, and spurs extending to freight depots, warehouses, manufacturing establishments, etc., connecting with its main lines and so as to enable it as an interstate carrier to handle all the freight to and from such points in Missouri and Illinois, and to points on the tracks and terminals of all roads entering the City of St. Louis, Missouri, and East St. Louis, Venice, Madison and Granite City, Illinois.

VI. That the Wiggins' Ferry Company, an Illinois corporation, had constructed and on August 17, 1893, and at the time of the acts complained of, owned and operated ferry and transfer boats across the Mississippi River between St. Louis, Missouri, and East St. Louis, Illinois; that on August 17, 1893, it operated the East St. Louis Connecting Railroad in Illinois, which connected with various lines entering East St. Louis, East Carondelet, Madison and Venice, Illinois, with its ferry facilities; and also operates a railroad in St. Louis, Missouri, and by means of said two railroads

and boats transports cars between the railroads entering Illinois points from the east to railroads entering St. Louis from the west, and vice versa.

That said Wiggins' Ferry Company controls the lines of railroad of the East St. Louis Connecting Railway, an Illinois corporation, operating in East St. Louis, its line connecting with the boats of the said Wiggins Ferry Company, and the St. Louis Transfer Railway Company, a Missouri corporation, operating under the control of the Wiggins' Ferry Company, certain railroad tracks in the City of St. Louis.

That in so operating said Wiggins' Ferry Company was, on August 17, 1893, and subsequent thereto, a common carrier engaged in interstate commerce.

VII. That in 1881 the Missouri Pacific Railway Company and other corporations entered into a combination to consolidate under the control of the Missouri Pacific and Wabash the properties of the St. Louis Bridge Company, the Union Railway & Transit Company, the Tunnel Railroad Company of St. Louis, and the Terminal Railroad of East St. Louis, comprising and including the Eads Bridge and all the railroads used in connection therewith, with the intent to restrain competitive interstate and foreign commerce conducted by said and other railroad corporations at St. Louis, Missouri, and other points, and intending by said combination to monopolize the interstate commerce and to suppress competition therein between the railways; and to that end the Missouri Pacific and Wabash Companies entered into an agreement with the St. Louis Bridge Company and the Tunnel Railroad Company, by which there was leased all of the property of the Bridge and Tunnel Companies, including that held under lease or contract, to said Wabash and Missouri Pacific Companies.

That pursuant to said lease the Missouri Pacific and Wabash Companies took possession of all of the property of said St. Louis Bridge Company and Tunnel Railroad Company, and began and continue to operate said Eads Bridge, Tunnel Railroad Company and the Terminal Railroad Company of East St. Louis and the Union Railway and Transit Company.

That by means of said control, said lessees, the Missouri Pacific and Wabash Companies, were enabled to arbitrarily fix and maintain whatever price they wished for transportation of passengers and freight over the Eads Bridge between Illinois and Missouri, by reason of which control of interstate commerce there were exacted and charged unreasonable and extortionate bridge tolls and charges for interstate commerce and the public was subjected to ruinous and unnecessary delays in said commerce.

That in order to secure competition and obtain relief from said conditions, and to enable interstate commerce to be conducted at reasonable rates and without unnecessary delay and to rid themselves of the said monopoly, certain citizens of St. Louis applied to Congress for authority to erect a competing railway bridge across the Mississippi River at St. Louis; that on February 3, 1887, Congress granted a charter for that purpose, and in order to maintain and keep said bridge an independent and competitive instrument of interstate commerce the citizens of St. Louis, Missouri, asked Congress to, and it did, insert in said charter a provision (Sec. 11) that the "St. Louis Merchants Bridge Company, or its successors, shall not agree or consent to the consolidation of this bridge with any other bridge across the Mississippi River, or to the pooling of the earnings of this bridge company with the earnings of any other bridge company

on said river. Nor shall any person who is or may be a stockholder or director or manager of any other bridge over said river be a stockholder or director or manager of the bridge herein provided for; provided, that if this provision of this act shall at any time be violated in any of these particulars, such violation shall, without legal proceedings, at once forfeit the privilege hereby granted, and such bridge shall become the property of the United States," etc.

That afterwards, on September 1, 1888, some persons or corporations intending to defeat the object for which the bridge was built and to remove the obstacles to consolidating said Merchants Bridge with the Eads Bridge, and thus deprive the citizens of Missouri and Illinois of the benefits of competition in interstate commerce, and with the purpose of placing the control of the Merchants Bridge and the railroads used in connection therewith under the same persons or corporations as the Eads Bridge and railroads used in connection therewith, so as to maintain a monopoly and destroy competition in interstate commerce, did procure the act of February 3, 1887, to be amended by striking out the word "stockholder" in said Sec. 11 wheresoever the same occurred.

VIII. Pursuant to the combination thus formed to control and restrain interstate commerce, on October 3rd, 1889, an agreement was made between the Terminal Railroad Association, the St. Louis Bridge Company, the Tunnel Railroad Company and the Missouri Pacific and Wabash Companies, in which the lease of July 1, 1881, was cancelled and a new agreement entered into by which the Terminal Railroad Association became lessee of the entire property of the corporations above named as parties to the agreement of July 1, 1881.

That thereafter, on August 17, 1893, the defendants, Missouri Pacific Railway Company, Louisville & Nashville Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Ohio & Mississippi Railroad Company, Wabash Railroad Company, St. Louis Bridge Company, Tunnel Railroad Company of St. Louis, Terminal Railroad Company of St. Louis, Union Railway & Transit Company, Terminal Railroad Company of East St. Louis, St. Louis Merchants Bridge Terminal Railway Company, St. Louis Merchants Bridge Company, East St. Louis & Carondelet Railway Company, Illinois Transfer Railway Company, Granite City & Madison Belt Railroad Company, St. Louis Belt & Terminal Railroad Company, St. Louis Terminal Railway Company, and their respective officers and directors, intending unlawfully to restrain interstate commerce and to monopolize such commerce and to prevent competition among said railroads and bridges, and to deprive the public of the facilities and the advantages of free and open competition between railroad systems, bridges, ferry and ferry transfer companies and other instruments of interstate commerce, entered into an unlawful combination and conspiracy to effect a consolidation and control of the properties of the St. Louis Bridge Company, the Tunnel Railroad Company of St. Louis, the Union Railway and Transit Company, the Terminal Railroad of St. Louis, the St. Louis Merchants Bridge Terminal Railway Company, the St. Louis Merchants Bridge, the East St. Louis & Carondelet Railway Company, the Illinois Transfer Railway Company, the Granite City & Madison Belt Railroad Company, the St. Louis Belt & Terminal Railroad Company, the Missouri Pacific Railway Company, the Louisville & Nashville Railroad Company, the Cleveland, Cincin-

nati, Chicago & St. Louis Railway Company, the St. Louis, Iron Mountain & Southern Railway Company, the Ohio & Mississippi Railway Company, the Wabash Railroad Company, under the control of the Terminal Railroad Association of St. Louis, and solely to unlawfully restrain interstate commerce as aforesaid, they did proceed to consolidate the said last named competing railroads and bridges in the following manner:

On August 17, 1893, the St. Louis Merchants Bridge Terminal Company (hereinafter referred to as Merchants Company) and the Terminal Railroad Association of St. Louis (hereinafter referred to as the Terminal Association) made an agreement by which the Merchants Company agreed to grant to the Terminal Association the perpetual use of all railroad facilities then or thereafter to be possessed or acquired by the said Merchants Company in the City of St. Louis, in payment for which the Terminal Association guaranteed the payment of all liabilities of the Merchants Company and agreed to endorse its guarantee of payment of three millions and a half of bonds of the Merchants Company, and said Terminal Association subscribed for 4384 shares of the capital stock of the Merchants Company, and the Merchants Company sold and transferred to the Terminal Association said shares as full paid and non-assessable.

That on said date there was also made between the Terminal Association and the Merchants Bridge Company and the St. Louis Terminal Railway Company, an agreement by which the Terminal Association became the assignee of the contract theretofore made between the St. Louis Terminal Railway Company and the Merchants Bridge Company, and by means thereof the Terminal Association came into

control of the St. Louis Terminal Railway Company and its property, and still controls and operates the same.

That in 1893 there was in effect an agreement and pooling arrangement between the Wiggins' Ferry Company, the St. Louis Terminal Railroad Association, and the St. Louis Merchants Bridge Terminal Railway Company, establishing rates for passengers and freight between Illinois and Missouri, and that said, or a similar agreement, was in effect in 1894, 1895, 1896 and 1897, and thereafter continued in force between the Terminal Association and the Wiggins' Ferry Company.

That afterwards, pursuant to the said unlawful conspiracy to control interstate commerce, and solely as an instrumentality to effect said purpose, said Missouri Pacific Railway Company and the other named trunk lines through their control of the Terminal Association, proceeded to unlawfully acquire the ownership and control of the St. Louis Merchants Bridge Terminal Railway Company and the bridge and railway corporations controlled by it, in the following manner:

About May 1, 1897, the St. Louis Merchants Bridge Terminal Railway Company sold to said Terminal Association 13,416 shares additional of its stock, which gave said purchaser control of the majority of the stock of the St. Louis Merchants Bridge Terminal Railway Company, and thereafter the Terminal Association owned and owns and operates the St. Louis Merchants Bridge Terminal Railway Company and fixes rates for interstate commerce over all the instrumentalities controlled by the St. Louis Merchants Bridge Terminal Railway Company; and said Terminal Association in purchasing such shares acquired

the ownership and control of the St. Louis Merchants Bridge and controls and operates the St. Louis Merchants Bridge Company, and the Eads Bridge, and without competition fixes unreasonable rates to be charged upon both of said bridges alike, thereby operating the same as a single instrument of interstate commerce, and therein enjoys and maintains a monopoly and depriving the people of the benefits of competition between instruments of such commerce.

That after August 17, 1893, various of the defendant trunk lines became stockholders in the Terminal Association, and each is now the owner of the several amounts thereof above set forth.

That said fourteen railroad companies named as the owners of the stock of the Terminal Association were on July 15, 1902, operating under one control and management, the St. Louis Terminal Railroad Association, the lines of railway it controls, the St. Louis Merchants Bridge Terminal Railway Company, the lines of railway it controls, and the Eads Bridge and the Merchants Bridge and fixed the charges upon said railroads and bridges, and that a uniform price was charged for transporting interstate commerce over said respective controlled lines and bridges without any competition between them, and that unreasonable charges were thus fixed through the instrumentality of the St. Louis Terminal Railroad Association, which is a mere holding company for said fourteen trunk lines, whereby all competition in interstate transportation of freight and passengers has become stifled and destroyed, and the profit and benefit thereof enures to said fourteen trunk lines owning the stock of the Terminal Association.

IX. That in 1902, an agreement was made between the Terminal Association and the Wiggins Ferry

Company, whereby the former obtained control of the latter and its properties, and that through said arrangement 9500 out of 10,000 shares of stock of the Wiggins Ferry Company have been deposited with a trustee to be held and voted by it on behalf of the fourteen trunk lines owning the capital stock of the Terminal Association; that by reason of the control of the Wiggins Ferry Company by the Terminal Association all competition between said companies in interstate commerce has become stifled and destroyed.

X. That by reason of the premises the said fourteen trunk lines owning the stock of the Terminal Association and acting through it own, control and operate all of the said theretofore named bridges and terminal railroad lines and facilities, comprising in all about one hundred and fifty miles of railroad, and all use said properties for interstate business between Illinois and Missouri, and compel all other railroad companies not owning stock in the Terminal Association to use its said property for such interstate business, and that said fourteen railroads acting through the Terminal Association jointly and arbitrarily fix unreasonable charges for interstate commerce and destroy all competition therein.

That unless complainant prevents the continued existence and carrying out of the conspiracy to unlawfully restrain commerce, said monopoly will be perpetuated and the public greatly injured, and the Act of Congress of July 2, 1890, to protect trade and commerce will be circumvented and the public be left at the mercy of a monopoly.

That the properties enumerated are so operated by the Terminal Association (controlled by said fourteen railroad companies) as to constitute a monopoly, of all interstate commerce between the states of Illinois and

Missouri, and so as to exclude from participation therein all interstate commerce on the part of the carrier of freight and passengers other than those named as parties to said unlawful combination and conspiracy.

The prayer was for a decree that the combination and conspiracy hereinbefore described is unlawful, that all acts done or to be done in carrying out are in derogation of the common rights of the people of the United States and in violation of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," that the defendants, etc., be perpetually enjoined from carrying out the same, that all agreements made between the defendants looking to the operation of the Eads Bridge and its tracks in a common or a non-competing interest with the Merchants Bridge and its tracks, be declared void, and the parties to such agreements be enjoined from further carrying out the same, or the operation of such bridges, railroad tracks and terminals in such common or non-competitive interests; that the defendants and each of them be enjoined from operating, controlling and maintaining the properties as a common instrument of interstate commerce under the common control of the fourteen owning railroad companies, and in addition that the several defendants be respectively enjoined as follows:

First: That the fourteen owning railroad companies be perpetually enjoined from voting or acting as the owner of any of the shares of stock of the Terminal Railroad Association of St. Louis, or of the Wiggins Ferry Company, or of the Merchants Bridge Terminal Railway.

Second: That the Terminal Railroad Association

be enjoined from recognizing or accepting said fourteen owning companies as the owners of any shares of its stock and from permitting them to vote such stock and from paying any dividends to them or recognizing as valid any transfer of such stock unless authorized by this Court.

Third: That the Terminal Association and the owners of its stock be perpetually enjoined from voting, controlling or acting as the owner of any of the shares of the stock of the St. Louis Merchants Bridge Terminal Railroad Company, or the Wiggins Ferry Company or the Madison, Illinois & St. Louis Railway Company, or the St. Louis Transfer Railway Company, or the Wiggins Car Transfer Company, or the St. Louis Terminal Railroad Company, or the Granite City & Madison Belt Railway Company, or the East St. Louis Connecting Railway Company.

Fourth: That said last named companies be perpetually enjoined from recognizing or accepting the Terminal Railroad Association of St. Louis, etc., as the holders or owners of any of the shares of their respective stocks and from enjoying any of the other privileges of such owners.

Fifth: That the individual defendants be enjoined from doing any act in furtherance of the conspiracy, etc.

The petition was filed in the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri, on November 29th, 1905.

The Answer of the Terminal Railroad Association of St. Louis, the St. Louis Merchants Bridge Terminal Railway Company, Wiggins Ferry Company, St. Louis Bridge Company, St. Louis Merchants Bridge Company, the fourteen owning trunk lines, and various individuals, was in substance as follows:

I. Admits that the defendant trunk lines are railroad corporations and common carriers of freight and passengers engaged in interstate commerce.

Denies that the Terminal Railroad Association of St. Louis (referred to as Terminal Association), the St. Louis Merchants Bridge Terminal Railway Company (referred to as Merchants Company), the Wiggins Ferry Company, the St. Louis Bridge Company, and the St. Louis Merchants Bridge Company, or any of them, are common carriers engaged in interstate commerce, except for the purpose of furnishing facilities for common carriers and to the extent and in the manner to be stated.

Admits that the Eads Bridge and Merchants Bridge are owned respectively by the St. Louis Bridge Company and the St. Louis Merchants Bridge Company, and are and have since 1889 been the only two bridges across the Mississippi River between Illinois and Missouri, at St. Louis.

Admits the construction, location and equipment of the two bridges substantially as alleged in the petition.

II. Denies that on August 17th, 1893, or at any time, the Terminal Association and the Merchants Company owned, controlled or operated parallel and competing lines of railroad in the states of Missouri and Illinois and across the Mississippi River, by means of bridges or in any manner.

III. Denies that the Terminal Association, the Merchants Company and the Wiggins Ferry Company did or do control and operate all the lines of railroad or means of transportation for passengers and freight in interstate commerce, and any of the previous charges.

IV. Admits the organization of the Terminal Association under Missouri laws in July, 1889, but denies

the ownership of its capital stock as charged and alleges that the time and purpose of its organization and the amount and ownership of its stock are as thereinafter stated.

Admits that the capital stock of the Terminal Association was increased to $50,000.00, and that its issued and outstanding stock are now held and owned by the proprietary companies in the amounts and manner stated in the petition, except as to several of the individual holders.

Admits that each proprietary company is represented by a director in the board of directors of the Terminal Association; admits that the fourteen proprietary companies constitute the principal trunk lines entering St. Louis and East St. Louis on either side of the Mississippi River from all portions of the continent and conducts the greater portion of interstate commerce, which is conducted across the Mississippi River, at St. Louis; admits that the Terminal Association was created by the consolidation of the Union Railway & Transit Company of St. Louis, and the Terminal Railroad of St. Louis, and succeeded to the rights, property, etc. of these companies, and that by such consolidation there was issued for each share respectively in such constituent companies, one share of the capital stock of the Terminal Association, and alleges that the purpose of such consolidation and issue of stock are as afterwards stated in the answer.

Denies that when the consolidation was effected either of the constituent or primary companies owned a complete railroad with equipment, or that any railroads or tracks owned or operated by either of them were connected so as to form one continuous line of railroad running in the same general direction and into the States of Illinois and Missouri, across the Mis-

sissippi River, or the Eads Bridge or elsewhere, but allege that at said time neither of such companies owned any line of railroad over or upon said bridge or in the State of Illinois, or operated any railroad at any point, the status and condition of the properties of said constituent companies and the character and extent thereof and the manner of operation being at the time of the consolidation as stated in the answer.

Denies that by said consolidation there was brought under the control of the Terminal Association any property of the St. Louis Bridge Company, of the Tunnel Railroad of St. Louis, or of the Terminal Railroad Company of East St. Louis; denies that at the time of such consolidation any of said companies were engaged in interstate commerce; alleges that by the consolidation the Terminal Association became the owner of the properties of the constituent companies, the Union Railway & Transit Company and the Terminal Railroad of St. Louis, but of no other property, and allege that the Terminal Association secured and now has control of and operates the properties of the companies to the extent, in the manner and for the purposes stated in the answer.

Denies that any of the companies named in the petition were at any time consolidated under the name of Terminal Association, except the Union Railway & Transit Company of St. Louis and the Terminal Railroad of St. Louis, and denies that any line of railway of either of said companies was operated in the State of Illinois or elsewhere than in the State of Missouri at the time or prior to such consolidation or was connected with any lines of railway entering East St. Louis, Madison, Granite City and East Carondelet, but alleges that the conditions in said respects of the prop-

erties of the constituent companies were as stated in the answer.

Denies that on or before July 3, 1889, the Terminal Association had or operated railroad tracks substantially as alleged in the petition, but avers that on and prior to July 3, 1889, the Terminal Association had no assistance; alleges that it became an incorporated company under an agreement of consolidation, dated July 26, 1889, between the Union Railway & Transit Company of St. Louis, and the Terminal Railroad of St. Louis, upon the filing of such agreement with the Secretary of State of Missouri, on July 30, 1889, at which time said constituent companies thus consolidated did not own or operate railroad tracks in the State of Illinois, and all that they did own were certain railroad tracks connecting with the tracks of the tunnel and with each other in the City of St. Louis, all of which at the time were leased to the St. Louis Bridge Company and the Tunnel Railroad Company of St. Louis.

Alleges that at the time of such consolidation the Union Station at Eighteenth and Clark avenue in the City of St. Louis, had not been constructed and was not for about five years thereafter; that at the time of such consolidation the Missouri Pacific and Wabash were lessees of property of the St. Louis Bridge Company and of the Tunnel Railroad Company of St. Louis, and sub-lessees of the properties of the Union Railway & Transit Company of St. Louis and the Terminal Railroad of St. Louis, and as such lessees operated the leased properties then consisting of the Eads Bridge, the Tunnel and certain tracks in the City of St. Louis.

Denies that the Terminal Association operates tracks located or connected as alleged in the petition, but avers that its own controlled and operated lines and connections are as stated in the answer.

Denies that the Terminal Association operated or operates or controls any switches, tracks, spurs, etc., connecting with warehouses, depots, factories or business establishments, in the named cities in Illinois, but admits and avers that it does operate and control such facilities in St. Louis and East St. Louis, together with freight depots and extensive terminals in said cities, the character, nature and extent of which and the business conducted therewith are as stated in the answer.

Denies operating or controlling facilities as to enable it to handle over its owned or controlled tracks, any traffic into or out of Madison, East Carondelet or Granite City, but alleges that it reaches all of the other cities and towns adjacent to East St. Louis which were named in the petition and the kind of establishments, industries and plants located therein, and has been and is through trackage contracts, leases, stock ownership and control been able to provide facilities whereby traffic reaching any point in St. Louis or any line of railroad may be transported to a connection with any of the railroad lines entering Madison, Granite City, Venice, East St. Louis and East Carondelet, Illinois; except as admitted denies every allegation in the fourth subdivision of the petition.

V. Admits that the Merchants Company was organized in August, 1887, under Missouri laws, and its charter amended in 1893, but denies that it built a railroad of any character from the Illinois shore over the Merchants Bridge to the Union Station in St. Louis, or operated such a railroad on August 17, 1893, or at any time.

Admits that the Madison, Illinois & St. Louis Railway Company was organized under the laws of Illinois for the purpose of building, and did build, a railroad from the east end of the Merchants Bridge to Granite

City, about four and one-half miles, and that said road was built for the purpose of being operated by the Merchants Company, and that on and after August 17, 1893, it was so operated and controlled through ownership of all its stock.

Avers and admits that the St. Louis Terminal Railway Company was organized under Missouri laws to construct a railroad from a line of the Merchants Company to the west approach of the Merchants Bridge in Missouri, through the city and county of St. Louis; denies that the railway of the St. Louis Terminal Railway Company was ever at any time leased to, operated or controlled by the Merchants Company; denies the existence at any time of the East St. Louis Terminal Railway Company.

Avers and admits that the St. Louis Transfer Railway Company was organized under Missouri laws and built a railway from Grand avenue to Arsenal street in St. Louis, but denies that its line was operated by the Wiggins Ferry Company, and avers that the length of the road in St. Louis does not exceed six miles.

Avers and admits that the Illinois Transfer Railway Company and the Granite City & Madison Belt Line Railroad Company are Illinois corporations; denies that either was organized for the purposes charged; denies that on August 17, 1893, or at any time either was controlled or operated by the Merchants Company and avers that the Illinois Transfer Railway Company was not incorporated until October, 1899, and the Granite City & Madison Belt Line Railway Company was not incorporated until December, 1892.

Denies the St. Louis Belt & Terminal Railway Company is a railroad corporation or built any line of railway prior to August 17, 1893, or at any time was controlled or operated by the Merchants Company; avers

that it was organized March 11, 1902, and its line of railway was not yet completed.

Admits the capital stock of the St. Louis Merchants Bridge Company prior to August 17, 1893, was and still is owned by the Merchants Company; admits that in 1889, the St. Louis Merchants Bridge Company leased its bridge to the Merchants Company for forty years—that said lease was thereafter cancelled, and a lease made to the Madison, Illinois & St. Louis Railway Company, the stock of which is owned by the Merchants Company; said two leases being substantially similar.

Denies that on August 17, 1893, or at any time the Merchants Company owned or operated a railroad as charged; avers that on and before said date the railway owned by the Merchants Company in St. Louis in the City of St. Louis was located as shown in the answer.

Avers that the Merchants Company has at no time owned, operated or controlled railway tracks in St. Louis other than as just stated and denies that any portion of its tracks connect with all lines of railroad extending from St. Louis as charged.

Denies that on or before August 17, 1893, the Merchants Company owned, controlled or operated terminal facilities of the character or to the extent, or having connections with other lines, as charged in the petition, and denies all other allegations in the fifth subdivision of the petition.

VI. Admits and avers that the Wiggins Ferry Company is an Illinois corporation and at the times alleged in the petition owned and operated car ferry and transfer boats on the Mississippi River between St. Louis and East St. Louis; that the East St. Louis Connecting Railway is an Illinois corporation operating a

railroad in East St. Louis connecting with said transfer boats; that the St. Louis Transfer Railway Company is a Missouri corporation operating railway tracks in St. Louis; denies all other allegations in the fifth subdivision of the petition, and avers that the East St. Louis Connecting Railway and the St. Louis Transfer Railway are separately operated, each having its own board of directors and servants and employees; that the Wiggins Ferry Company owns all the stock of the East St. Louis Connecting Railway and St. Louis Transfer Railway; that the tracks of the East St. Louis Connecting Railway connect with any of the railroad lines entering East St. Louis, but not with any lines entering Madison or Venice, that the tracks of the St. Louis Transfer Railway Company connect with the ferry inclines of the Wiggins Ferry Company in St. Louis, as also do the tracks of the East St. Louis Connecting Railway Company, in East St. Louis; that the Wiggins Ferry Company, the East St. Louis Connecting Railway Company and the St. Louis Transfer Railway Company are operated in connection and through facilities owned by them, many cars are daily transferred between railroads entering East St. Louis and railroads entering St. Louis.

VII. Admits and avers that the Missouri Pacific and Wabash in 1881, agreed with the St. Louis Bridge Company and with the Tunnel Railroad of St. Louis, that all properties of the latter two companies, including the properties of the Union Railway & Transit Company and of the Terminal Railroad of St. Louis (theretofore leased to the St. Louis Bridge Company and the Tunnel Railroad Company of St. Louis), were leased to the Missouri Pacific and Wabash, and pursuant to such lease said lessees took possession and operated said properties, but the answer denies that the

purpose, effect or object of such lease was to restrain interstate commerce or to monopolize the same or to suppress competition therein, and denies that by means of any agreement either of said lessees were enabled arbitrarily to fix and maintain such prices as they wished for transportation between Illinois and Missouri or over the Eads Bridge, and denies that by reason of such control of facilities unreasonable or exorbitant bridge tolls or charges were made, or the public was in any manner subjected to unreasonable delays in respect to interstate commerce.

Admits that on February 3, 1887, Congress granted a charter to the St. Louis Merchants Bridge Company, which was amended substantially as alleged in the petition, and except as admitted, denies all other allegations in the seventh subdivision of the petition.

VIII. Admits that on October 1, 1889, an agreement was made between the Terminal Association, the St. Louis Bridge Company, the Tunnel Railroad of St. Louis, the Missouri Pacific and Wabash, whereby the lease above referred to was cancelled and an agreement was made by which the Terminal Association became lessee of the properties of the St. Louis Bridge Company and of the Tunnel Railroad of St. Louis; denies that said agreement was pursuant to any combination to control or restrain interstate commerce, but avers that its purpose was to promote such trade and commerce and the effect was to prevent monopoly thereof, and that the agreement is as stated in the answer.

Denies that at the time alleged or at any time any combination, agreement or understanding was entered into as alleged in the petition for the purpose of restraining trade or commerce or monopolizing the same or preventing competition therein or depriving the public of any facilities in respect thereto.

Denies that any of those named in the petition or representatives thereof have at any time entered into any such combination.

Admits that on August 17, 1893, the Merchants Company and Terminal Association entered into an agreement containing substantially the provisions charged and avers that on said date said companies entered into a further agreement whereby the Terminal Association became the assignee of the contract which had theretofore been made between the St. Louis Terminal Railway Company and the Merchants Company, and that the Terminal Association thus came into control of the St. Louis Terminal Railway Company, and has since controlled and operated the same.

Denies that in 1893, or at any time there was a pooling arrangement between the Wiggins Ferry Company, the Terminal Association and the Merchants Company establishing rates between Illinois and Missouri.

Denies any combination or conspiracy with respect to any of the terminal properties described in the petition, to control or restrain interstate commerce.

Denies that on May 1, 1897, or at any time the Merchants Company sold to the Terminal Association any of its shares of stock, except those mentioned in the agreement of August 17, 1893; avers that the Terminal Association did in 1893, purchase such additional shares of stock in the Merchants Company as to give the Terminal Association a majority thereof, but denies that the Terminal Association owns or operates the Merchants Company or fixes rates to be charged for it, or have any property controlled by it as alleged in the petition.

Admits that after August 17, 1893, the additional trunk lines named in the petition became stockholders in the Terminal and avers that the Baltimore & Ohio

Southwestern is also an owner, but by virtue of being a successor of the Ohio & Mississippi Railway Company, which became an owner in 1889.

Denies that the proprietary companies at any time operated under one management or control the Terminal Association and the Merchants Company or the railways owned or controlled by either of those companies or fixed their charges, or that an unreasonable price was charged for transporting freight or passengers of either of the bridges or lines or railway of the Merchants or Terminal Companies; denies that unreasonable charges are made by either of said companies for any service or that the Terminal Association is a holding company for the proprietary companies, but avers that the Terminal Association is an active operating terminal company, owning and operating railway tracks, and under agreement with the proprietary companies regulates its own charges and tolls in such manner that the revenue derived therefrom shall be sufficient only to meet its fixed charges and operating expenses; that by reason of the fact that the system of the Merchants Company, although separate and distinct complement of the system of the Terminal Association, trackage arrangements are necessary to be made and have been made by the said companies, whereby practically all the interstate traffic passing over the system of the Merchants Company passes likewise over the system of the Terminal Association, and for the use of the facilities of the two systems a single charge is made, resulting in efficiency and service, economy in operation and reduction in rates.

Denies that competition in interstate commerce has been stifled, destroyed or restrained through anything charged in the petition, and denies the making of unreasonable charges and avers that by the things alleged

and admitted competition is promoted and encouraged; denies, except as admitted, all other allegations in the eighth subdivision of the petition.

IX. Denies that in 1902, or at any time any agreement was made by the Terminal Association and the Wiggins Ferry Company, whereby the Terminal Association obtained control of the latter company, or any of its property; denies that any shares of the capital stock of the Wiggins Ferry Company have been deposited with a trustee for any purpose; denies that the Terminal Association controls the Wiggins Ferry Company or any of its property or fixes its charges, but avers that all the capital stock of the Wiggins Ferry Company is pledged to secure the payment of bonds issued by the Terminal Association, as averred in the answer; denies that by reason of anything complained of competition in interstate commerce is stifled, destroyed, restrained or monopolized, and denies the motives, intentions, purposes and objects as charged in the petition.

X. For a further full and complete answer to the petition, say:

That the organization of the terminal, bridge and ferry companies named in the petition, the purposes and properties thereof, the relation of each to the other, the agreements relating thereto, etc., are as follows:

With respect to the Eads Bridge and tracks connecting therewith: Prior to 1874, there were few industries in St. Louis or East St. Louis which had railway connections and the freight traffic was handled by wagons and ferries. To facilitate public convenience, the Eads Bridge and its terminal facilities were constructed in the following manner:

On February 6, 1864, the St. Louis & Illinois Bridge Company was incorporated in Missouri to construct

a bridge over the Mississippi River at St. Louis. In February, 1865, the Illinois Legislature gave the consent of that State to the proposed structure, and on July 25, 1866, an Act of Congress empowered said Bridge Company to erect a bridge at St. Louis. February 21, 1867, the Illinois Legislature incorporated the Illinois & St. Louis Bridge Company with power to construct a bridge across the Mississippi River at St. Louis, and authorized it to consolidate with any Missouri bridge company having like power. March 19, 1868, the Missouri Legislature authorized the consolidation of said two bridge companies and on July 7, 1868, they were consolidated under the name Illinois & St. Louis Bridge Company, which consolidation was recognized by Congress by an Act approved July 20, 1868, and authorized it to construct a bridge as theretofore authorized was granted the consolidated company.

Said consolidated company completed the construction of the Eads Bridge on July 1, 1874, the Bridge Company had during construction made three bond issues of four, three and two million, respectively, the proceeds being used in the construction of the bridge. In 1872, the St. Louis Tunnel Railroad Company was incorporated in Missouri, to construct a railroad from the terminus of the bridge in St. Louis to connect with the tracks of the Missouri Pacific and other railroads and side tracks. Whereupon, such construction was commenced and the City of St. Louis transferred to the St. Louis Tunnel Railroad Company the privileges with respect to building the tunnel which it had theretofore conferred upon the consolidated bridge companies. The tunnel was completed July 4, 1874, subject to a bond issue which had been made by it. The bonds of the bridge and tunnel companies defaulted, foreclosure

followed, and a decree ordering a sale of the properties; for the purpose of buying the properties at such sale the St. Louis Bridge Company was incorporated in Missouri, December 18, 1878, and at the same time the Tunnel Railroad of St. Louis was incorporated. Thereafter, the St. Louis Bridge Company bought at the foreclosure and now owns the Eads Bridge and the Tunnel Railroad of St. Louis; at the same foreclosure bought and still owns the tunnel. The proceeds of the Bridge Company's stock and bonds and of the Tunnel Company's stock were used to pay for the properties thus purchased.

While the Eads Bridge and tunnel were being constructed it was intended that they would be used by all railroad companies with their own motive power, and that such companies would furnish their own terminal facilities, therefore no provision had been made for the acquisition of motive power or for side tracks, warehouses or terminals for operation by the bridge and tunnel companies, which, however, learned within a few months before completing their properties that none of the railroads intended to provide for connecting with the bridge and tunnel, so found it necessary to construct terminal tracks in each city connecting with the bridge approach and tunnel and to that end the bridge and tunnel companies caused to be incorporated under Missouri laws the Union Railway & Transit Company of St. Louis, on April 13, 1874, and the Union Railroad & Transit Company of Illinois, in Illinois, on April 14, 1874. Thereafter, the Union Railway & Transit Company of St. Louis acquired property near the west end of the tunnel on which it constructed railway tracks, switches and side tracks connecting with the tunnel, and the Union Railroad & Transit Company of Illinois acquired a tract of land in East St.

Louis near the bridge approach on which railway tracks and switches were constructed. Neither of said transit companies had any stations or undertook to transport passengers or freight, their business consisting solely of transporting with their locomotives the cars of trains received by them from the various railways connecting with them in the cities of St. Louis and East St. Louis.

On April 10, 1874, the Union Depot of St. Louis was incorporated in Missouri, for the purpose of constructing and maintaining union stations for passengers and freight in the City of St. Louis, and constructing railway tracks to connect such stations with the terminals and with such railroads as might desire connections. This company was formed pursuant to an agreement between various railroad companies and certain individuals who were to furnish capital for the purchase of the ground and construction of the depot so that the depot when constructed might be leased to the railway lines in common which desired to use the same with the right on the part of the lessee to purchase the property thereafter. Pursuant to that arrangement the union depot was constructed and tracks connecting it with the tracks of the Union Railway & Transit Company of St. Louis, and thereafter the Union Station thus built, was operated by the railroads entering St. Louis and East St. Louis until 1894.

The Act pursuant to which the Union Depot Company of St. Louis was incorporated, provided that any railroad company or companies might become stockholders thereof.

In 1875, after the bridge and tunnel had been completed and said terminals connecting therewith established the Union Railway & Transit Company of St. Louis provided locomotives and train crews to handle

trains over the bridge and through the tunnel, delivering the same for various railway lines in St. Louis and East St. Louis, and when the Union Station was completed in 1875, said Transit Company also for the trunk lines ending in East St. Louis brought their passenger trains into said Union Station, through the tunnel and over the bridge. This method of operating continued until January 1, 1879, when the Union Railway & Transit Company of East St. Louis and the Union Railway & Transit Company of Illinois leased all of their properties and locomotives to the St. Louis Bridge Company and the Tunnel Railroad of St. Louis, with privilege of purchase.

The terminal facilities provided by the said two transit companies have proved inadequate, and was incorporated on February 25, 1880, the Terminal Railroad of St. Louis, for the purpose of constructing tracks in St. Louis, connecting the tracks of the Transit Company, the Union Depot Company of St. Louis, the Tunnel Railroad of St. Louis, and all railroads entering, or to enter, the City of St. Louis, so as to provide ample and convenient connections and terminal facilities for all railroads then or thereafter to enter St. Louis, and for all parties doing business with such railroads. Additional land was acquired, tracks laid and connections made with the union depot with said Transit Company and with the various trunk lines connecting with those companies.

On February 23, 1880, there was incorporated in Illinois the Terminal Railroad of East St. Louis (referred to as Terminal Railroad of Illinois) to connect in that city the bridge approach and the tracks of the Union Railway & Transit Company of Illinois with the tracks of other railroads entering or to enter East St. Louis, the general purpose being to provide ample ac-

commodations and terminal facilities in and near East St. Louis for all railroads then or thereafter entering said city.

On March 3, 1880, the Terminal Railroad of St. Louis and the Terminal Railroad of East St. Louis, owning no motive power, but merely land on which tracks had been constructed, leased their properties to the St. Louis Bridge Company and the Tunnel Railroad of St. Louis with privilege of purchase.

By their control of the properties of the two transit companies and of the two terminal railroads acquired through such leases, the St. Louis Bridge Company and the Tunnel Railroad of St. Louis assumed the operation through the tunnel and over the bridge of the cars and trains of various railroads entering St. Louis and East St. Louis and connecting with the leased and operated terminals. This method of operation continued until July 1, 1881, when the St. Louis Bridge Company and the Tunnel Railroad of St. Louis jointly leased their properties and assigned their leases of other properties to the Wabash and Missouri Pacific companies, the lessee agreed to pay by way of rental, the interest and principal on certain bonds of the St. Louis Bridge Company, dividends at a prescribed rate on its stock, also on the stock of the Tunnel Railroad of St. Louis, also taxes and assessments on the leased properties. By said lease the Wabash and Missouri Pacific companies secured control of the bridge and tunnel, of the properties of the two transit companies and of the two terminal railroads, and thereafter operated the same until 1889, such operation being conducted separately from their other properties, and not being a source of revenue or profit, the charges being so regulated as to produce only revenue sufficient to pay the fixed charges and cost of operation.

In 1889, Mr. Jay Gould, then controlling the Missouri Pacific and Wabash properties, also the two transit companies, the two terminal railroads and the Union Depot Company, agreed with six of the trunk lines to cause the Union Railway & Transit Company of St. Louis and the Terminal Railroad of St. Louis to be consolidated as the Terminal Railroad Association of St. Louis, and to be conveyed to said consolidated company the property of the Union Depot Company. The capital stock of the Transit Company of Illinois and of the Terminal Railroad of Illinois, and to cause a portion of the capital stock of the Terminal Railroad Association of St. Louis to be issued in equal parts to the six trunk lines, the remainder to be retained and issued later to such other trunk lines as might desire to become parties to the agreement, the leasehold interests held by the Missouri Pacific and the Wabash in the bridge and tunnel to be transferred to the Terminal Association, which was to issue its bonds, part of which were to be used to pay for the purchase of the properties to be conveyed to the Terminal Association, and the remainder to purchase additional real estate and terminal facilities. The trunk lines, parties to this agreement, were by a concurrent agreement joined in perpetuity of power with each other and such other companies as might from time to time be admitted as proprietary lines of the Terminal Association, of all its properties, the use so granted to be appurtenant to each railroad company; the railroad companies on their part accepted in perpetuity such joint use and agreement that the charges should be sufficient to pay the fixed charges provided for in the leasing of the bridge and tunnel properties, interest on bonds, interest on such future sums as might be expended to acquire additional property, and to pay

taxes and operating expenses. The agreement also provided for the subsequent admission of any other railroad company desiring the same.

Pursuant to such agreements the Union Railway & Transit Company of St. Louis and the Terminal Railroad of St. Louis were consolidated July 30, 1889, as the Terminal Railroad Association of St. Louis, release of the bridge and tunnel properties was assigned by the Missouri Pacific and Wabash companies to the Terminal Association, which thereby, in 1889, became the owner of the properties of the Union Railway & Transit Company of St. Louis, the Union Depot Company, the Terminal Railroad of St. Louis, the stock of the Union Railway & Transit Company of Illinois, and of the Terminal Railroad of Illinois, and the lessee of the Eads Bridge and the tunnel, and thereafter operated and now operates the same. That the purpose of the agreement was to provide terminal facilities in the cities of St. Louis and East St. Louis for the switching of cars and trains between such cities, such use and service to be open not only to the six proprietary lines, but also on like terms and conditions to any and all other railroads desiring such use, the operation to be without profit to the stockholders of the Terminal Association, but to furnish convenient and ample facilities for the railroads entering St. Louis and East St. Louis, and that conforming with such purpose said properties have been so operated and are now opened to the use of all railroad lines not members upon the same terms and conditions accorded to the proprietary companies, no dividends have been declared or paid and the charges of the Terminal Association have been so regulated as to produce revenue sufficient only to meet its fixed

charges and operating expenses and to make necessary alterations, improvements and repairs.

The answer then describes the properties of which the Terminal Association acquired control in 1889, and alleges that in that year the Terminal Association executed its mortgages to secure several bond issues to the Central Trust Company of New York, trustee; that the Union Station has been and is used by every railway line entering St. Louis, for which they are all charged alike without regard to membership in the Terminal Association, on a wheelage basis.

XI. The St. Louis Merchants Bridge Company was incorporated under Illinois laws, April 4, 1886, to construct a bridge over the Mississippi River at St. Louis, and on February 3, 1887, Congress authorized it and any incorporated railroad companies associated with it to build a bridge across the Mississippi River. The Act of Congress provided that all railroad companies desiring to use this bridge should have equal rights and privileges on the payment of reasonable compensation. The bridge was completed and opened for operation in May, 1890, and is the "Merchants Bridge."

The St. Louis Merchants Bridge Terminal Railway Company (referred to as the Merchants Company), incorporated in Missouri, August 17, 1887, to operate a railroad from Eighth and Gratiot streets to the western approach of the Merchants Bridge, and was authorized by ordinance of the city to do so.

The Merchants Company built its tracks and on February 1, 1889, leased the Merchants Bridge, then under construction, the lease providing that all railroad companies desiring the use of the property should be entitled to equal privileges.

On March 4, 1889, the Electric City & Illinois Rail-

way Company was incorporated in Illinois, to construct a railway from the east approach of the Merchants Bridge to East St. Louis, the name of said company thereafter being changed to Madison, Illinois & St. Louis Railway Company.

It constructed a line from said east approach to Granite City, but never into East St. Louis. All of its stock is owned by the Merchants Company. In 1893, the lease of the Merchants Bridge to the Merchants Company was cancelled and the bridge was leased to the Madison, Illinois & St. Louis Railway Company, by which lease and its ownership of the stock of the Madison, Illinois & St. Louis Railway Company, the Merchants Company switches cars and trains from Seventh and Gratiot streets in St. Louis to the wharf, thence north and over the Merchants Bridge to Granite City, Illinois.

In order to secure funds to erect the Merchants Bridge and the facilities of the Merchants Company and of the Madison, Illinois & St. Louis Railway, there were bond issues.

The operation of the Merchants Bridge, the Merchants Company and the Madison, Illinois & St. Louis Railway Company proved unprofitable and in 1893, the Merchants Company was insolvent. The facilities owned and controlled by the Merchants Company were distinct from the system of terminals owned and controlled by the Terminal Association, the tracks of the Merchants Company being at right angles with the tracks of the Terminal Association. There was no industry located on the tracks of either company which was reached by the tracks of the other, and the Merchants Company had no passenger station in St. Louis, and did not connect with the Union Station or with any of the railway lines entering St. Louis from the

south or west, or with any of the railway lines entering East St. Louis from the south or east.

In 1893, the facilities of the Terminal Association had become inadequate and it was manifest that it would be to the interest of all railroads entering St. Louis, East St. Louis, Madison, Granite City, Venice and East Carondelet, and of the public, if some arrangement could be effected whereby the two systems of terminals could be so connected and operated that freight traffic between St. Louis and East St. Louis destined to cross the Mississippi River or to any industry located on the tracks of either of the terminal systems or on the tracks of any one of the railway companies could be moved without change of motive power and with a single charge for the service so performed. To this end and for this purpose, and to prevent the disintegration of the properties operated by the Merchants Company, an agreement was made on August 13, 1893, between the Merchants Company and Terminal Association, whereby the latter agreed to guarantee $3,500,000.00 of bonds of the Merchants Company and to purchase from the Merchants Company 4384 shares of its stock, and to advance to the Merchants Company a sufficient amount to enable it to pay certain liabilities. At the same time the Terminal Association acquired other shares of stock of the Merchants Company to the extent of a control and the Merchants Company then granted to the Terminal Association the right to operate trains over all the properties owned or controlled by the Merchants Company. The Terminal Association agreed to construct a line connecting the Union Station with the Merchants Company so that passenger trains might cross the Merchants Bridge and freight trains cross the Merchants Bridge and the Merchants Company sys-

tems might connect with the tracks of the Terminal Association.

In 1903, the State of Missouri, at the relation of the Attorney General, filed an information in the Supreme Court of that State, alleging the illegality of this agreement and of said ownership of stock and said Court held the same authorized by the laws of Missouri.

XII. The Wiggins Ferry Company is an Illinois corporation, incorporated to operate ferries across the Mississippi River at St. Louis. It owns large tracts of land in East St. Louis available for terminal purposes, of all the stock of the East St. Louis Connecting Railway Company, an Illinois corporation (1878), owning railway tracks in East St. Louis connecting with some of the railways entering that city, and it also owns all of the stock of the St. Louis Transfer Railway Company, a Missouri corporation of 1884, owning about six miles of tracks between Arsenal street and Calvary avenue in St. Louis. The tracks of said two last named companies connect with the inclines of the Wiggins Ferry Company, which owns almost the entire river front north of the Eads Bridge, opposite St. Louis. In 1902, certain trunk lines entering St. Louis or East St. Louis, purchased the capital stock of the Wiggins Ferry Company, and thereafter agreements were made whereby the title to all of said stock was vested in the proprietary companies of the Terminal Railroad Association (other than the Vandalia Railroad Company), and in the Pennsylvania Company (controlling the St. Louis, Vandalia & Terre Haute Railway Company, now Vandalia Railroad Company), as equal owners, and all of the railway companies thus purchasing, which were not then members of the Terminal Association, were admitted into

membership upon the same terms and conditions as the other trunk lines had theretofore been admitted, and were accorded in common with such companies equal joint use and benefit of all the terminals of the Terminal Association.

At that time the Terminal Association was contemplating the acquisition of additional facilities for which it needed to borrow money, and it needed the guaranty as to the payment of interest thereon by the proprietary companies, and to secure the payment of the principal by the pledge of all of the stock of the Wiggins Ferry Company in such manner that the general mortgage proposed to be issued would constitute a first lien upon such stock. Accordingly, such general mortgage was issued, dated December 16, 1902, under which eighteen million dollars of bonds were issued and now outstanding, the main security for which is the agreement of each of the proprietary lines to use in perpetuity the facilities owned by the Terminal Association, and the pledge of the Wiggins Ferry stock. The Terminal Association is under obligation to the proprietary lines to provide, from time to time, such additional terminal facilities as may be requisite to handle the traffic of these lines in the cities of St. Louis and East St. Louis, for which purpose an issue of additional bonds is provided. It is the purpose of the Terminal to issue such bonds and use the proceeds thereof to increase its terminal facilities so that all such terminals may be operated as an entirety, traffic moved between all points for a single charge and without change of motive power, and all railway lines served equally and without discrimination. To this end agreements were made by the non-proprietary railway companies named and the Terminal Association, which provided, among other things, that in con-

sideration of the use granted thereby of all the terminal properties of the Terminal Association, the railway companies accepted such use and agreed forever to employ those facilities for all railroad traffic controlled by them crossing the river at the City of St. Louis, and guaranteed each to the extent of its interest in the Terminal Association, payment of interest on said bonds which the Terminal Association had issued or was about to issue. Said agreements further provided that the tolls or charges of the Terminal Association should be so regulated as to meet fixed charges, maintenance and operation, to the end that said properties might be operated at cost and in the event of a deficit each proprietary line would advance one-fourteenth of such deficit.

XIII. The necessity for joining ownership and control of common terminals in large cities for the joint use of all railways has been recognized by Legislatures in many states, and by Congress in respect to the District of Columbia.

The Terminal Association and the Merchants Company are each incorporated under Missouri laws for the purpose of providing terminal facilities for railroad companies. For the conduct of the business of such companies the State of Missouri has by legislative enactment given power to build, maintain and operate terminal railways and facilities, to own and operate ferries and bridges, to construct tunnels and to hold the stock and bonds of any company operated in connection with and forming a part of such facilities.

The purpose and object of the organization of the Terminal Association and of the terminal companies issuing stock it acquired and of the Union Depot Com-

pany, were to meet said recognized requirements of said railroad traffic, pursuant to which the Terminal Association has caused to be incorporated and has acquired control of other terminal properties, among them being the East St. Louis Belt Railroad Company, incorporated in the year 1898, which constructed tracks connecting the tracks of the Madison, Illinois & St. Louis Railway Company with the tracks of the East St. Louis & Carondelet Railroad Company; the Illinois Transfer Railroad Company, incorporated in Illinois in 1889, which has constructed a connection between the tracks of the East St. Louis Belt Railroad Company with the tracks of the Illinois Central Railroad Company. In 1893 the Terminal Association acquired the stock of the St. Louis Terminal Railway Company and has since caused the tracks of that company to be built to connect the Merchants Bridge Company in north St. Louis with the Wabash Railroad Company in St. Louis County; it has acquired the stock of the St. Louis Belt & Terminal Railway Company, a Missouri corporation, and is causing the tracks of that company to form a connection between the St. Louis Terminal Company and the St. Louis & San Francisco Railroad Company, and the Chicago, Burlington & Quincy Railway Company, and with all intermediate companies; in 1900, the Terminal Association acquired the capital stock of the Granite City and Madison Belt Line Railroad Company, an Illinois company, to construct a belt line around Granite City. In 1903, the Terminal Association acquired all the stock of the East St. Louis & Carondelet Railroad Company, which owns tracks connecting with the East St. Louis Belt Railroad Company and extends southwardly to East Carondelet; it also acquired all the capital stock of the Interstate Car Transfer Company, a Missouri

corporation which operates a ferry transfer between the Chicago, Burlington & Quincy Railway Company in north St. Louis and inclines of the Southern Railway Company.

XIV. The capital required for the construction and acquisition of said various properties has been largely secured by bond issues, which the answer then describes.

XV. While the properties of the Terminal Association and its subsidiary companies, of the Merchants Company and its subsidiary companies, and of the Wiggins Ferry Company and its subsidiary companies, are now and have at all times been separately operated, no one of the systems is complete or adequate in itself and for the purpose of making a more complete and perfect system of terminals, various track connections have been made since 1893, between the tracks of the different companies, and agreements have been entered into between them, whereby in some instances the tracks of one company may be operated for all traffic passing in one direction, while the tracks of the other company may be used for traffic passing in the opposite direction, thus facilitating the handling of trains.

To avoid the physical discomfort and congestion and delays which would be incident to having all passenger and freight trains go through the tunnel, arrangements have been made between the Merchants Company and the Terminal Association to operate over the Merchants Bridge a considerable portion of the freight and passenger traffic, which, in the absence of such arrangement would pass over the Eads Bridge. Such arrangements were possible only through the control which the Terminal exercises by its ownership

of the majority of the stock of the Merchants Company.

In addition to the fourteen proprietary lines being required to use the facilities of the Terminal Association in perpetuity, there are other lines entering St. Louis and East St. Louis, engaged in interstate commerce, between which lines and the proprietary lines there is an interchange of interstate traffic. Few of such lines connect directly with each other, all of them not members of the Terminal Association have been and are now granted the same use of its facilities on the same terms and conditions as the proprietary lines without distinction between the proprietary and non-proprietary lines with respect to handling traffic or charge or the use of terminals, the purpose of so handling traffic being to effect economy in operation and expeditious interchange, and the effect being to prevent any one line from securing an advantage or monopoly. No one of the terminal companies has any freight cars of its own or handles freight traffic on their own account. They receive freight only for some line with which they connect and simply serve as a conduit of interchange. The Terminal Association is the only terminal company having a passenger station in St. Louis. Freight depots are maintained by each terminal company and freight destined for any line may be received and delivered at any station of any terminal company, each acting as the agent of all railway lines. Traffic between all large cities of the United States and the City of St. Louis is competitive, and the method in which the terminals of St. Louis and East St. Louis are conducted as herein stated, prevents any railway from obtaining any advantage over any other with respect to facilities for handling traffic in the City of St. Louis.

The method of operation of the terminal companies was never intended to result and never has resulted in profit in operation. No dividends have been declared or paid. None of the acts complained of in the petition or admitted herein have been in pursuance of any combination or conspiracy to restrain or monopolize any interstate commerce; on the contrary, all have been pursuant to the purpose to create and develop in St. Louis and East St. Louis a complete system of railway terminals, to be operated economically and without profit, for the joint and equal use upon like terms and conditions of all railway lines at any time entering either of said cities, and thus to promote interstate commerce, and avoid a monopoly in such commerce.

The bonds are held by many owners throughout the United States and Europe.

When the Terminal Association was formed all the terminals in the City of St. Louis and East St. Louis connecting with the bridge and tunnel were owned by a single individual, but with the organization of the Terminal such control passed to it, and through the admission from time to time of the proprietary lines, all of the main lines of railway in the United States now have joint control and use of the facilities which otherwise would be under the control of one individual or interest.

For the interchange between railroads and continuous movement of interstate traffic there must be maintained a system of tracks connecting the different railways, some of which have termini in East St. Louis and others in St. Louis. Manufacturing and industrial plants have been located upon the tracks of several terminal companies because of the great advantage it afforded shippers by the railway facilities furnished for switching to and from such establishments

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over all of the terminal systems for a single charge. Every industry or shipper located on any line of either company is thus enabled to receive from and ship to any point on any line of railway in the United States, freight, subject only to a single switching charge, and at the same time is given the benefit of competitive rates between all railway lines out of St. Louis or East St. Louis.

The ownership of the stock of the Wiggins Ferry Company by each of the proprietary lines is incident to its membership in the Terminal Association. If any proprietary line abandons the use of properties of the Terminal Association or defaults in its guaranty of the obligations of that company, its interest in the Wiggins Ferry Company passes to the other proprietary lines, so that at all times all properties of the Wiggins Ferry Company are open to the use of all the proprietary lines.

The acts of the railroad companies forming the Terminal Association, as explained in the answer, have been and are in all respects lawful and do not tend in any way to restrain trade or commerce or to monopolize or attempt to monopolize the same; on the contrary, said acts have been done for the sole purpose of furnishing those railroad companies with equal facilities for handling expeditiously and at the least possible charge all traffic, both freight and passengers, in which the City of St. Louis alone is concerned, and also all traffic passing through the St. Louis gateway and to enable all the railroad companies terminating on the east bank of the Mississippi River and in St. Louis to interchange business across the river with greater promptness and economy and to deliver and to receive passengers at a union station in St. Louis, and to deliver and receive freight at numerous points

and industrial establishments in St. Louis, and on the east bank of the river, which they otherwise could not do.

That the railroad companies in thus providing terminal facilities to be used by all on equal terms, have not stifled competition as between themselves, but have made it possible for each to compete without restriction in an enlarged territory, made common to all on equal terms so far as terminal facilities and charges are concerned.

Denies all manner of unlawful combination and confederacy.

The Replication was in the usual form of a replication in equity, closing the issues, and without containing any additional or unusual provisions.

Decree: On June 6, 1910, the Circuit Court entered a decree of dismissal, from which an appeal was taken to the Supreme Court of the United States, which on April 22, 1912, reversed the decree and remanded the case to the District Court (which had in the meantime succeeded to the jurisdiction of the Circuit Court), for further proceedings to be had in conformity with the opinion of the Supreme Court. The mandate of the Supreme Court to that effect was filed in the District Court on June 3, 1912.

The opinion of the Supreme Court will be found in **224 U. S. 383,** to which reference is made. After the filing of the mandate, the complainant moved for a decree complying therewith, and the defendants submitted several plans for reorganization of the Terminal Association, which did not meet the approval of the Government, whose counsel demanded a court to be constituted under the Expedition Act, and the case again went to the Supreme Court on the question

whether the right to such a court had been taken away by the Judicial Code of March 3, 1911. The Supreme Court having decided that the right still existed, the case proceeded before a Court so constituted, and on March 2, 1913, a final decree upon the mandate was entered as follows (omitting caption):

Final Decree: "This cause came on to be heard at this term and it appearing that the United States of America, complainant, had heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 6th, 1910; and the Supreme Court of the United States at is October Term, 1911, having duly heard said appeal upon the transcript of the record, and having thereupon on the 22nd day of April, 1912, ordered, adjudged and decreed that said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri, in this cause, be and the same is hereby reversed, and that said cause is remanded to this Court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date the 23rd day of May, 1912.

And afterwards, to-wit, it appearing that on the 16th day of June, 1913, a preliminary decree was entered in accordance with the mandate of the Supreme Court; now, therefore, it is ordered, adjudged and decreed by the Court as follows:

1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the anti-trust act of July 2nd, 1890 (26th Statute, 209), when it and the various bridge and terminal companies composing

it or operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unification of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation, and confining itself to the transaction of a terminal business such as supplying and operating facilities for the interchange of traffic between railroads, and to assist in the collecting and distributing of traffic for the carrier companies, switching, storage and the like, and modifying its contracts as herein specified.

An election having been made to continue the combination for terminal purposes, the defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of its constituent companies and from operating any of the properties belonging to it or its constituents otherwise than as terminal facilities for the railroad companies using the same, and from making charges otherwise than for and according to the nature of the services so lawfully authorized to be rendered.

2. The agreement of October 1st, 1889, between the Terminal Railroad Association and various other defendants, known in the record as Exhibits "A" shall be reformed in the following manner:

a. The provision thereof reading as follows shall be eliminated:

"III. In consideration of the foregoing each of the proprietary companies, for itself only, and not for the others, acknowledges the right of joint use hereinbefore created by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above

described, for all passenger and freight traffic within its control through, to and from St. Louis, and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

b. The provision thereof reading as follows shall be eliminated:

"XVII. Neither party shall sell, assign, transfer or underlet the rights and privileges hereby granted or any of them, to any other company or companies without the unanimous consent of the board of directors of the first party."

In lieu thereof the following may be inserted:

"No proprietary or using company shall sublet its rights and privileges in the use of the terminal facilities to any other company or companies."

c. The provision thereof reading as follows shall be eliminated:

"XIX. This agreement may be executed in counterparts and any railroad company not named as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof, thereby its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto."

In lieu thereof the following shall be inserted:

1. In case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with

equal rights of joint ownership and control of the combined terminal properties of said Association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties here of the second part.

2. Any other railroad company not electing to become a joint owner as above provided, but desiring to have the use of the terminal facilities of the Terminal Railroad Association, may employ the use thereof upon such reasonable terms and regulations as are in respect of use, character and cost of service, place it upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

3. Any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of said terminal properties and the owning, proprietary companies shall be, submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri, by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed and the party so filing said petition shall at least fifteen days before so doing so serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day. Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri, and shall be heard when called in its regular order on said docket, and the proceedings shall be subject to review by appeal as in any other case. Upon being advised by the filing of petition by such dispute

or controversy the Court may at once admit the applying company to ownership or use of the terminal facilities during the pendency of the proceeding upon the giving of security in amount and form as it may direct.

d. All provisions of the purport or effect of those eliminated from the agreement of October 1st, 1889, shall also be removed from all other contracts affecting the ownership or use of the terminal facilities to which the Terminal Railroad Association and the proprietary companies, or any of them, are parties. The benefits and burdens of the amended agreement shall enure to and rest upon all future proprietary and using railroad companies, respectively.

3. Hereafter traffic destined to St. Louis, Missouri, or to points west of the Mississippi River, and to be transported through the St. Louis gateway, or traffic from St. Louis, Missouri, destined to points east of said river shall not be billed to East St. Louis, Illinois, or other junction points and termini of the railroads of any of said railroad companies east of the river and then re-bill to destination, but for all such traffic each railroad company shall issue through bills of lading unless otherwise directed by the person controlling the same. The defendants are perpetually enjoined from violating the above provisions.

4. The defendants are perpetually enjoined from making any special or so-called arbitrary charge for and use of the traffic facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

5. The provisions of this decree shall extend to and

embrace all railroad companies now or hereafter admitted to joint ownership or use of the facilities of the Terminal Railroad Association, and to all its facilities present and future acquired.

6. Nothing in this decree shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such Commission.

7. This cause is reserved for such further orders and decrees as may be deemed necessary.

St. Louis, January 29th, 1914."

From that decree the Government appealed, on March 27, 1914, and there were also appeals by the defendants, whose motions to modify (filed after the appeal of the Government had been allowed) had been overruled, and by certain shippers having industries located on the lines of the Terminal Association, who had been denied intervention (requested after the appeal of the Government had been allowed).

At the time of the taking of proofs by Examiner Babbitt, these appeals were pending and undecided. Since then, they have been decided, but the mandate has not yet come down.

The effect of the decision, as expressed in the opinion of the Supreme Court, may be obtained from the concluding paragraph thereof, which reads as follows:

"It follows from what we have said that the decree below giving effect to the mandate of this court will be modified so as to recognize the right of the Terminal Company as an accessory to its strictly terminal busi-

ness to carry on transportation as to business exclusively originating on its lines, exclusively moving thereon and exclusively intended for delivery on the same and in other respects the decree will be affirmed."

SIDNEY F. ANDREWS,
Counsel and Solicitor for Petitioner, Manufacturers Railway Company.

NAGEL & KIRBY,
Counsel and Solicitors for the Intervening Shippers.

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Endorsed on cover: File No. 24,762. E. Missouri D. C. U. S. Term No. 488. Manufacturers Railway Company, Anheuser-Busch Brewing Association et al., appellants, vs. The United States and Interstate Commerce Commission. Filed June 7th, 1915. File No. 24,762.

488

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

MANUFACTURERS' RAILWAY COMPANY, AND ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, APPELLANTS,

v.

UNITED STATES OF AMERICA, APPELLEE, AND INTERSTATE COMMERCE COMMISSION, INTERVENING APPELLEE.

} No. 487.

MANUFACTURERS' RAILWAY COMPANY, APPELLANT, ANHEUSER-BUSCH BREWING ASSOCIATION, ET AL., INTERVENING APPELLANTS,

v.

UNITED STATES OF AMERICA, APPELLEE, AND INTERSTATE COMMERCE COMMISSION, INTERVENING APPELLEE.

} No. 488.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and in accordance with the provisions of section 2 of the Act of June 16, 1910, 36 Stat. 542, and the Urgent Defi-

ciency Act of October 22, 1913, 38 Stat. 208, 220, moves the court to advance the above-entitled causes for joint hearing on a day convenient to the court.

These are appeals from final decrees of the District Court of the United States for the Eastern District of Missouri denying motions for injunctions against the enforcement of an order of the Interstate Commission, and dismissing the petitions therefor.

The cases involve the questions *inter alia:*

1. Whether the commingled and indivisible relations between Anheuser-Busch Brewing Association, a corporation engaged in the manufacture and sale of beer, and Manufacturers' Railway Company, a corporation engaged in plant switching for the brewing association, which corporations are under joint ownership, operation, management, and control, render illegal as a rebate, preference, and discrimination, any allowance whatever by the St. Louis trunk line railroads to Manufacturers' Railway Company, in payment for service for delivering in or at the brewery plant, loaded cars to the trunk lines for transportation in interstate commerce. If so, whether $2.50 per car is just compensation for such service.

2. Whether the validity of the order of the Interstate Commerce Commission may be tested by the alleged similarity or dissimilarity of the facts and circumstances surrounding Terminal Railroad Association, and the facts and circumstances surrounding Manufacturers' Railway Company, at St. Louis,

which are independent companies operating in separated sections of that city.

Certain questions in the cases have a distinct bearing on similar relations between other industrial companies and trunk-line railroads and for that reason an early determination of the same by this court is desirable.

Opposing counsel concur in the motion to advance.

JOHN W. DAVIS,
Solicitor General.

DECEMBER, 1915.

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FILED
DEC 11 1916
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1916.

MANUFACTURERS' RAILWAY COMPANY, Plaintiff Appellant,
ANHEUSER-BUSCH BREWING ASSOCIATION, *et al.*,
Intervening Plaintiff Appellants,
vs.
UNITED STATES OF AMERICA,
Defendant Appellee,
and
INTERSTATE COMMERCE COMMISSION,
Intervening Defendant Appellee.

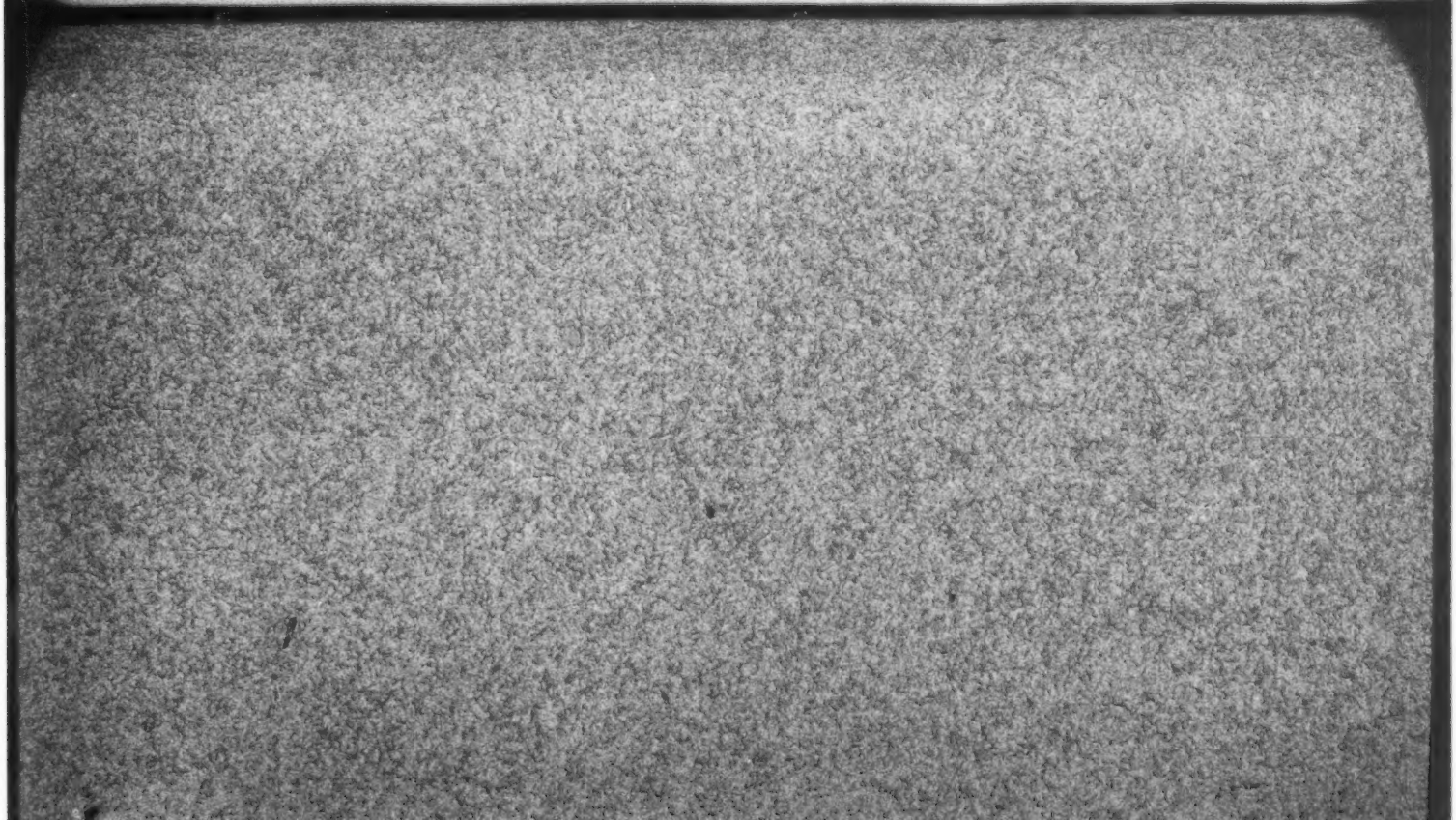
No. [redacted] 25

Appeal from the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

BRIEF FOR THE APPELLANT AND INTERVENING APPELLANTS.

SIDNEY F. ANDREWS,
Solicitor for Appellant, Manufacturers' Railway Company.
DANIEL N. KIRBY,
Solicitor for the Shippers, Intervening Appellants.
CHARLES NAGEL,
Of Counsel.

J. H. STEELE & CO., 10 N. THIRD ST., ST. LOUIS



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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1916.

MANUFACTURERS' RAILWAY COMPANY, Plaintiff Appellant,
ANHEUSER-BUSCH BREWING ASSOCIATION, *et al.*,
Intervening Plaintiff Appellants,
vs.
UNITED STATES OF AMERICA,
Defendant Appellee,
and
INTERSTATE COMMERCE COMMISSION,
Intervening Defendant Appellee.

No. 143.

Appeal from the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

BRIEF FOR THE APPELLANT AND INTERVENING APPELLANTS.

(Note: Except when otherwise indicated, the references herein to pages of the record, relates to the pages of the printed "Transcript of Record," filed in this Court. By agreement of counsel, Rec. II, pp. 91 and 115, and for the convenience of Court and counsel, the evidence before the Commission, transcript of which is on file in this Court, has not been printed in full, but an abstract thereof, as a part of the record in this case, is printed only in the transcript in the companion case, No. 142, subject to reference and use in either case.

Therefore, references herein to the transcript in the companion case, No. 142, will be distinguished from references to the transcript in this case (No. 143), by designating the record in No. 142 as "Rec. I," and that herein as "Rec. II.")

STATEMENT OF THE CASE.

This is an appeal from a final decree of the District Court, dismissing the bill.

The suit was brought by appellant, Manufacturers' Railway Company (Rec. II, p. 2), and shippers (Intervening Appellants) located on the lines of the Railway intervened (Rec. II, p. 30), to set aside in part and to enjoin in part, the enforcement of an order of the Interstate Commerce Commission. By final decree of the District Court, the Honorable Elmer B. Adams, Circuit Judge, and the Honorable David P. Dyer, District Judge concurring, the Honorable Walter H. Sanborn, Circuit Judge, dissenting, the bill was dismissed. (Rec. II, p. 78.) No opinions were filed in the District Court.

The proceeding before the Commission in which the order in question was made, is entitled "*Manufacturers' Railway Company, et al. vs. St. Louis, Iron Mountain & Southern Railway, et al., I. C. C. Docket No.* 3151" (Rec. II, p. 96.) In that proceeding the Commission issued three separate "Reports" or "Opinions" containing findings of fact and conclusions of law. For convenience, they will be referred to herein as "First Report" (June 21, 1911, 21 I. C. C. 304), "Second Report" (June 21, 1913, 28 I. C. C. 93), and "Third Report" (July 10, 1914, filed November 5, 1914, 32 I. C. C. 100), and the Appellant Manufacturers' Railway Company will be referred to as the "Railway."

The evidence in the District Court consisted of: (a) the pleadings, evidence, reports and *orders* in the proceeding before the Commission; (Rec. II, p. 96) and

(b) the "record proper" in the case of U. S. v. Terminal Railroad Association 224 U. S. 383, 236 U. S. 194 (Rec. II, p. 169.)

The facts which gave rise to the complaint before the Commission were briefly as follows:

In 1887, the "Manufacturers' Railway Company" was incorporated by Adolphus Busch and five other individuals, under the General Corporation Statutes of Missouri relating to Railroad Companies, for the purpose of "constructing, maintaining and operating a railroad *for public use* in the conveyance of persons and property" (Rec. I, 468).

A part of the charter power, granted by statute, which the Railway thus received from the State of Missouri, was the power to exercise the right of eminent domain; Rev. St. Mo. 1879, vol. 1, Sec. 892 (now Sec. 2360, R. S. Mo. 1909).

Section 14 Art. XII. of the Constitution of Missouri (in force since 1875), declares that all railways are "*public highways*, and *railroad companies common carriers.*"

While the line at first constructed by the Railway, extended merely from the then plant of Anheuser-Busch Brewing Association (hereinafter for convenience referred to as the "Brewery"), on Ninth and Pestalozzi Streets, eastwardly to a point of connection with the Iron Mountain Railroad, in First Street (near the west bank of the Mississippi River), later extensions and additions were made for the purpose of expanding that single line into a terminal railroad system (Rec. I. Busch 539, 540; Baulch 530, 531; Moore 476), and the Railway now owns and operates a

terminal and switching railroad, consisting of about twenty-three miles of main track and sidings (Rec. I, p. 480).

It is located in that portion of St. Louis known as "South St. Louis," its tracks traversing various public streets and alleys, as well as private property, in the district between LaSalle street on the north, and a point near Potomac street on the south, and between Thirteenth street on the west and the Mississippi river on the east. Its tracks connect with those of the St. Louis, Iron Mountain & Southern Railway, and with those of the St. Louis Transfer Railway (a subsidiary of the Terminal Railroad Association), with each of which it interchanges carload traffic moving in interstate commerce. By means of the connections aforesaid, the Railway's line forms a through route into and through the various states of the United States, in conjunction with all of the carriers by rail serving the City of St. Louis.

The principal lines of the Railway consist of: (a) Its *Pestalozzi Street* main line (being the original line built in 1887 or 1888), extending from Ninth and Pestalozzi Streets eastwardly to First Street, where it connects with the tracks of the Iron Mountain. (b) Its *Dorcas Street* main line, extending from Thirteenth and Dorcas Streets eastwardly to First Street where it connects with the Pestalozzi Street line and with the tracks of the Iron Mountain. (c) Its *Second Street* line, extending on and along Second Street, from LaSalle Street on the north to a point near Potomac Street on the south, with a lead eastwardly into Dorcas Street for connection with the Dorcas Street line and thereby with the Pestalozzi line and the Iron

Mountain. (d) Its "*viaduct*" or "*high line,*" extending from a connection with the Pestalozzi Street line at Second Street, eastwardly over a steel and concrete viaduct crossing over the main line of the Iron Mountain, and the tracks of the St. Louis Transfer Railway, to the "River Yard" of the Railway, and to a point or points of connection with the St. Louis Transfer Railway, through which access is had to all the lines and connections of the Terminal Railroad Association, *i. e.* all lines entering St. Louis (Rec. I, p. 485). (e) *Public and industrial spurs and switches*: From each of the main lines various leads extend the facilities to numerous industries and industrial spurs, public delivery yards, and public team tracks. Many of the industries thus served, have extensive manufacturing and commercial plants and are large shippers of freight in car load lots. The largest such shipper is the Anheuser-Busch Brewing Association.

All of the Railway's tracks, including those owned by it in fee, and those leased from the Brewery, are used in the service of the public (Rec. I. 479, 508, 588), and are held out by the Railway as a part of its facilities offered for public use (Rec. I, p. 630, 631).

The evidence before the Commission showed that while the Brewery is the largest shipper, in the year 1910 the number of cars interchanged by the Railway with the various trunk lines was 48791, and that of this number 8411 cars were traffic in which the Brewery had no interest whatsoever. In 1911 the number of cars interchanged was 54942, of which 11354, were cars shipped and received by shippers wholly independent of the Brewery. This showed an increase in one year of 2943 cars from shippers in no way

related to the Brewery. The Railway's total increase in all business for the year 1911 as compared with 1910, was 6151 (erroneously printed in the Exhibit as 5151) cars (Ex. 44, Rec. I. p. 865).

On a carload basis, the proportion of the entire business done for the Brewery and affiliated concerns in 1911, was approximately 78 per cent (Rec. I, p. 602).

In its first report (21 I. C. C. 304, 311) the Commission says:

> "For the year *ending April* 30, 1910, there were 42970 cars handled by the Manufacturers' Railway Company and of this number 37546 cars were handled for the Brewing Association, and 5424 cars were handled for some *eighty-seven other industries or patrons*, of which thirty-five shipped or received 10 cars or more. It is stated that when these comparisons are shown on a tonnage basis instead of a carload basis the percentage of traffic for the general public is much larger. Although under its own management and operation, the service of the Manufacturers' Railway Company for the brewery has increased, yet at the same time the proportion of traffic for others than the brewery has grown under somewhat trying conditions from 14 per cent to 27 per cent, based on tonnage of the entire business of the Railway, due, it is said, to the improved service rendered since the change in management."

Among the shippers (other than the brewery), served by the Railway, there are six other breweries (Rec. I, p. 878, Ex. 50; p. 674), competitors of the Anheuser-Busch Brewing Association, all of which also compete with breweries located in other industrial districts in St. Louis; there are also coal and lumber dealers who compete with like dealers located in other

districts in St. Louis and with dealers located in South St. Louis on the lines of the Iron Mountain. There are also various manufacturing industries served by industrial spur tracks, and competing with like industries located in St. Louis on the tracks of other carriers which perform terminal transportation services. There are also at various points, public team tracks upon which the Railway serves many shippers who do business in South St. Louis in competition with persons located in other parts of St. Louis and there served by other carriers (Rec. I, Ex. 50; p. 877, 878).

Concerning the public need of the Railway and its service, and concerning the "Terminal" the Commission said (First Report, 21 I. C. C. at 308, italics ours):

> "The Terminal Railroad Association, a corporation, dominates the principal terminal facilities of St. Louis. Its capital stock is owned in equal shares, and it is controlled, by the 14 trunk lines entering St. Louis. The Terminal or its proprietary or tenant lines own or control all bridges and ferries giving access to all terminals within and all lines directly entering the City of St. Louis, and no interstate shipment can enter or leave St. Louis except over the lines of the Terminal or some of its proprietary lines or its or their tenant lines. In St. Louis there are *three industrial centers* which naturally require *terminal facilities*. The *northern* section of the city along the river is one of these centers and is served by a considerable mileage of the *Terminal* Association and the rails of *nine of the trunk lines* entering St. Louis. In the *western* section of the city, in what is known as the Mill Creek Valley, there are many industries served by a considerable mileage of the *Terminal* Association and the rails *of four of the trunk lines* entering the city. In *South* St. Louis the companies rendering *terminal services*

are the Manufacturers' Railway *and the Iron Mountain.* The St. Louis Transfer Company, one of the subsidiary companies of the Terminal Association, has a line along the river bank, but is physically available *only to a negligible extent.* The lines of the Iron Mountain generally follow the bank of the river and reach such industries as are adjacent thereto. For a considerable distance along the river there is a steep grade to be overcome in reaching industries situated back from the river, and to confine these industries to the terminal facilities of the Iron Mountain would require a team haul up from the bank of the river. Therefore, in order to extend terminal facilities to this section of St. Louis, it would be necessary to develop them on the higher ground, extending them one or two miles back from the river, following the rise of the bluff, and seek outlets therefrom to the main artery along the river at such points as proper grades may be obtained, thus enabling interstate traffic to flow out from this section down to the lines along the river, and thence reach the outside world. The Manufacturers' Railway *was developed with this end in view,* and *industries have been located along its lines which it is now supplying with these facilities.* Due to these physical conditions, *it can hardly be held* that a carrier whose rails are for the most part confined to the bank of the Mississippi River furnish adequate terminal facilities for this important section of industrial St. Louis, and it seems, therefore, that *the facilities furnished by the Manufacturers'* Railway are *both reasonable and necessary.''*

For brevity the Terminal Railroad Association will be referred to herein as the "Terminal," and its subsidiary, the St. Louis Transfer Railway Company, as the "Transfer Railway."

The latter is a Railroad Corporation, engaged under its own charter in doing a terminal and switching business in South St. Louis. It has track connections with the Iron Mountain and with the Railway. Its stock is owned by the Wiggins Ferry Company, whose stock in turn is owned by some of the trunk lines which own the Terminal (Rec. I, p. 455). Through the Transfer Railway, as a separately operating terminal carrier which connects with the Terminal, the Railway reaches (interchanges carload freight with) the Terminal. Through the Terminal it reaches all the trunk lines which enter St. Louis.

Six of the trunk lines which are among the proprietors of the Terminal, *i. e.* own a part of its capital stock (Rec. I, p. 451), to-wit, the Iron Mountain, the Missouri Pacific, the St. Louis and San Francisco, the Wabash, the Rock Island, and the Burlington, not only have lines (from the south, west, or north) into St. Louis, over which they transport freight destined to or from points upon their own said lines, but they *also have terminals of their own within the switching limits of St. Louis, with which terminals* they *perform terminal transportation services,* in *connection with the line haul* performed partly or wholly *by other trunk lines,* and in respect of freight moving in interstate commerce to and from points within the switching limits of St. Louis (Rec. I, p. 656).

Thus, terminal switching services, constituting a part of the transportation of freight moving in interstate commerce, are rendered in St. Louis not only by the Terminal (which divides joint rates with its proprietary and tenant lines, Rec. I, p. 455), and by its separately operating incorporated subsidiaries

(like the Transfer Railway and Wiggins Ferry Company), but also *by each of said six trunk lines,* and by the Manufacturers' Railway.

But the Railway is the only carrier in St. Louis performing terminal (transportation) services, which *competes* with the Terminal and with its subsidiary and proprietary lines (Rec. I, p. 657); and the only competitors of the Railway in performing such services in South St. Louis, are the Iron Mountain, and the Transfer Railway (Rec. I, p. 489, 534).

After the original line of the Railway had been constructed, and on April 16, 1888, it leased the same, together with such additional tracks as might thereafter be constructed, to the St. Louis, Iron Mountain and Southern Railway Company, which, as lessee thereof, held possession of and operated all the tracks of the Railway until on or about January 27, 1909 (Rec. I, p. 475, 476, 539, 568).

Concerning the efforts of the Railway to enlarge its facilities and establish itself as a common carrier performing terminal transportation and switching, as shown by the evidence before the Commission at the time of its first report, the Commission said (italics ours); 21 I. C. C. at 311:

> "Beginning in the year 1904 when it was first decided not to re-lease the property and up to the present time large sums of money have been expended in developing it, *practically none of which was necessary in connection with the service of the brewery.* The testimony is that of a total of $800,000, so expended only 10 per cent of it has been necessary for the purpose of serving the brewery. *In addition to a number of team tracks* at different points on its lines, the com-

plainant carrier serves some *twenty industry tracks* or sidings twelve of which are said to be for industries served exclusively by it. * * * It appears, further, that *two-thirds* of the trackage of the Manufacturers' Railway has been constructed solely for the purpose of serving the public, while the remaining one-third is used in serving *both the brewery and the public.* It cannot be assumed, however, that all shipments moving to or from the brewery were shipments of the brewery. In the transaction of its very large business with the public it is no doubt true that a great many other interests are quite directly affected by the interstate commerce flowing to and from the brewery."

Again, on page 312, of said opinion, the Commission said: "In the case before us we find the Manufacturers' Railway Company located in the heart of an extensive and growing industrial center in one of the large cities of the country, and it is *not only holding itself out* for service to the public, but has during recent years been *actively* and *successfully soliciting business among the general public* and has succeeded in rapidly *increasing the percentage* of its total business done for *others than the brewery.*"

From the time the Railway began to operate its own lines it has been treated as a common carrier by the public authorities of Missouri, thus: the State of Missouri not only chartered the Railway as a common carrier, but the Railway reports to the "Railroad and Warehouse Commission" of Missouri, as required of common carriers by State statute (Rec. I, p. 488); it is assessed and taxed as a common carrier by the State Board of Equalization (Rec. I, Ex. 1, p. 855; p. 571); and the City of St. Louis (a sub-division of the State) granted it extensive ordinance franchises to operate

over streets and alleys *as a common carrier* (Rec. I, p. 469, 470).

The Railway has also been "treated as a common carrier" by the Interstate Commerce Commission (although in this case denied the full measure of its rights as such), *i. e.*, the Commission has *held it to be a common carrier;* it reports to the Commission as a common carrier, files tariffs as such, keeps its accounts according to the requirements for common carriers, and in all other regulatory respects, *acts and is treated as a common carrier* (Rec. I, p. 488).

Moreover, the Railway was, prior to the unlawful tariff cancellations by the trunk lines (complained of before the Commission), treated and dealt with as a common carrier by the trunk lines, and was granted divisions and allowances out of joint rates, and the record before the Commission so showed (Rec. I, p. 489, 509, *et seq.*).

The Railway has been and is engaged in carrying for hire the goods of those who see fit to employ it, *i. e.*, it holds itself out as a common carrier of property and is engaged in the service of "transportation as that term is defined in the Act" and as defined in decisions of this Court.

Concerning the subject of common ownership between the Railway and the Brewery, the record before the Commission showed: that the brewing corporation itself owns no stock in the Railway, nor does the Railway corporation own stock in the brewery; that some (but not all) of the individuals who own in the aggregate a control (about sixty per cent) of the brewery stock, also own a control of the Railway

stock; and that there are many persons owning stock in the brewery, who own no stock in the Railway (Rec. I, p. 537).

During the period of more than twenty years while the Railway was leased to and operated by the Iron Mountain, the trunk lines applied the St. Louis rates to shipments of freight destined to or from points upon the lines of the Railway, so that shippers located upon, along or near said line who used the same for the transportation of freight, received transportation services over said line, and made and received shipments at or near their various plants or places of business located upon industrial, private and other switches on or near said line, *at the St. Louis rates, without paying any freight charges in addition to said St. Louis rates* for the transportation of freight over said lines (Rec. I, p. 657, 658, 661, 662).

That is to say, *the trunk lines* during that long period of time, and while said lease was in operation, *extended their services* to industries *on the lines of the Railway, at the St. Louis rates, by absorbing into said rates* the *charges* of the said St. Louis, Iron Mountain and Southern Railway *for its service in switching* said carload traffic over the lines of the Manufacturers' Railway.

Upon the termination of said lease, and the taking over by the Railway of the operation of its own lines, it negotiated with the trunk lines for the purpose of establishing through routes and through joint rates covering the transportation of freight moving in interstate commerce over its lines, in connection with the lines of other carriers, and as a result of such negotiations the trunk lines did co-operate with it in establishing and making effective such through routes and

joint through rates; and pursuant to such arrangements appropriate tariffs were duly published and filed, as required by the Act to Regulate Commerce. Under those tariffs the trunk line carriers, parties thereto, agreed with the Railway on certain divisions thereof, said divisions being effected either in the form of technical "divisions," or in the form of "allowances" and absorptions by said trunk lines into the St. Louis rates, of the charges agreed to be paid to the Railway for its part of the service of transportation of said freight over its lines (Rec. I, p. 509, 510).

For many years prior to the time when the Railway began to operate its own lines, and ever since then (until March 1, 1910), it was and is *the universal custom* of all carriers transporting freight destined to or from points within the switching limits of St. Louis, to *apply the St. Louis rates* on certain traffic to *all team tracks, public delivery yards, public switches,* and *private yard, industrial* and *plant switches,* without making any charge *in addition to* the St. Louis rate for the terminal switching services (including the "spotting of cars"), which constitutes a part of the "transportation" of such freight to or from said points of origin or destination within the city of St. Louis; and until March 1, 1910, the practice aforesaid was applied to all team tracks, industrial and plant switches and shipping stations located upon the lines of the Railway (Rec. I, p. 490, 661, 662).

By the aforesaid practice there was created, established and maintained by all the terminal carriers operating within the city of St. Louis, and by the trunk lines interchanging freight with them, a "blanket" or "zone," within the city of St. Louis, which in-

cluded all the shipping stations, team tracks, public delivery yards, public switches, and private yard industrial and plant switches, located on or connected with the line of the Railway, as well as those located within said zone on the lines of other carriers. Within that zone, all shippers having access to such industrial spur tracks, private switches, and private or public team tracks, made and received their shipments of certain traffic at the St. Louis rates, without any charge being added for the terminal switching service (Rec. I, p. 662).

About December 31, 1909, each and all of the trunk lines heretofore referred to, by concerted action, sent to the Railway a notice that from and after March 1, 1910, their said respective tariffs, wherein they had *applied the St. Louis rates to industries and points on the Railway,* and whereby they had *absorbed into said rates the reasonable charges of the Railway* for its services aforesaid, *would be cancelled;* but *they did not* at the same time, nor later (by appropriate tariff changes), *discontinue the practice,* above described, by which the St. Louis rates were applied to all shipping points in St. Louis on the lines *of the Terminal* and *of its subsidiary* and *proprietary* lines (Rec. I, p. 456, 465).

They thus *increased* the rates applicable to points *on the Railway* but *did not increase* the rates *to competing points* in the *same "zone"* on the other and competing lines, which *they themselves owned or controlled* (Rec. I, p. 489, 490).

That action was the fruit of a conspiracy by the Terminal Association and the trunk lines owning it, whose attention was directed by a newspaper article,

to the fact that the Railway was announcing its intention of extending its line *across the river* by car ferries and by a line on the East side, and to the fact that the Railway would thus *invade the Terminal's monopoly of cross-river service* (Rec. I, p. 457, 500).

For the purpose of *preventing* the Railway from *becoming such a competitor*, the members of the Terminal *forced all the St. Louis lines by joint and concerted action* to *cancel all then existing divisions and allowances* to the Railway, and *to question its status as a common carrier* under the Act, *and its right to receive divisions or allowances.*

That conspiracy was unlawful, a violation of the Sherman Anti-Trust Act, and, as Commissioner Lane said in his concurring opinion (First Report, page 316), the action of the trunk lines pursuant to it in cancelling the tariffs, was because "they feared that a rival company was being developed. * * * The railroads seemed to have no doubt about their right to make it" (the allowance) "until by its extensions, the Manufacturers' Railway threatened to become a rival. Then came the simultaneous cancellation of these allowances, etc."

The effect of those tariff cancellations, upon the complaining and all other shippers using the lines of the Railway, was that their freight rates on substantially all interstate traffic, became *increased*, *i. e.*, they became liable thereafter for the St. Louis rates *plus* the *additional charge of the Railway* (Rec. I, p. 489, 490).

And the effect upon the revenue of the Railway was, that instead of receiving portions of the St. Louis rates, which amounted to an average compensation of

about $4.50 per car interchanged, its compensation was reduced to $2.00 per car (a rate which was much less than the cost to it of performing the service, Rec. I, p. 505), because its "local" rate was limited to that amount by city ordinance, a concession which the Railway had to make on local business (being a small proportion only of its total business), in part consideration for the grant to it of valuable franchises to lay and operate its tracks on city streets, through the operation of which tracks it was enabled to engage largely, and principally, in interstate business (Rec. I, p. 498).

So that both the shippers and the Railway suffered large money losses, through said tariff cancellations.

Immediately upon the cancellation of the tariffs, the Railway, together with certain shippers using its lines, filed their complaint (Rec. II, p. 97) with the Commission, on behalf of the Railway and of all shippers using its lines, against the trunk lines, claiming that such action was in violation of sections 1 and 3 of the Act to regulate commerce, and claiming appropriate relief in respect of rates, as well as money reparation.

THE PROCEEDINGS BEFORE THE COMMISSION.

The gist of the complaint, and of the answers of the defendant carriers, is thus stated by the Commission (21 I. C. C. 305), (Clemens, Chairman):

> "The complainants in this case, the Manufacturers' Railway Company and a number of shippers located on its lines, filed a petition asking that through routes be established to and from points on its lines of railway in St. Louis, Mo.,

from and to points on the lines of each of the defendant railway companies and points beyond, also for the fixing of reasonable divisions or absorptions out of the St. Louis rates to be paid to the Manufacturers' Railway Company for terminal services rendered by it, and for reparation.

The petition alleges that there are many industries in the southern part of St. Louis served by the Manufacturers' Railway that are not served by any other railroads, and others which are served by it, as well as by other railroads; that prior to March 1, 1910, there existed through routes and joint rates over the lines of defendant carriers and complainant Manufacturers' Railway Company to and from points on the line of said complainant company; that on December 31, 1909, defendants notified the Manufacturers' Railway Company that after March 1, 1910, no allowance would be made to that company out of the St. Louis rates for its service; that said action by defendants was the result of an unlawful combination and conspiracy in violation of the Sherman Anti-Trust law; that pursuant to said action defendants' then existing tariffs were cancelled, and since that date the St. Louis rates have not been applicable to and from points on the lines of the Manufacturers' Railway, and that the public served by the lines of that company has been subjected to unreasonable charges.

It is further alleged that by reason of the action of defendants there has not existed since March 1, 1910, any reasonable or satisfactory through route from or to any of the industries on the line of the Manufacturers' Railway Company, and that the effect of the cutting off of said company from an allowance out of the St. Louis tariff rates will be to deprive it of a large volume of traffic that will be diverted to the St. Louis Iron Mountain & Southern Railway Company, hereinafter referred

to as the Iron Mountain, the only competitor of the Manufacturers' Railway Company in the southern part of the city of St. Louis; that the Manufacturers' Railway Company is organized under the Missouri statute providing for the incorporation of railroads as common carriers; that it has been granted several franchises by the city of St. Louis for the use of public streets upon condition that it will perform the duties of a common carrier of freight for the citizens of and industries located in St. Louis and East St. Louis; these franchises require the construction and operation of inclines on the banks of the Mississippi River and a belt line on the east side around the city of East St. Louis, and contain a provision that the Manufacturers' Railway Company 'shall be run, operated, and managed independently by its own officers and stockholders in free and fair competition at all times'; that it is being taxed under the laws of Missouri providing for the taxation of franchises and property belonging to common-carrier corporations; that said complainant company files reports in accordance with the act to regulate commerce and keeps its accounts in accordance with the system prescribed by the Interstate Commerce Commission, and that its tariffs are duly published and filed in accordance with law.

It is further alleged that the refusal of defendants to longer continue through routes and joint rates, is unjust, unreasonable, and unlawful, and constitutes an unlawful discrimination as between localities, industries, and shippers on or near the lines of the Manufacturers' Railway and other localities, industries, and shippers on or near the lines of other carriers in St. Louis; and, further, that by reason of their action, defendants have subjected the locality in which the Manufacturers' Railway Company is located, and the traffic shipped over its lines and thence over the other lines

of railroads, to undue and unreasonable disadvantage and gives undue and unreasonable preference and advantage to the shipping public in other localities of St. Louis and to the particular description of traffic shipped by industries and persons in such other localities in violation of law.

Some of the defendants deny that complainant, Manufacturers' Railway Company, is a common carrier engaged in interstate commerce, or that through routes and joint rates existed prior to March 1, 1910; and allege that the tariffs referred to in the petition merely provide for absorption of switching charges of the Manufacturers' Railway Company, except as to tariffs on bituminous coal, which gave it a division of the rate; that other satisfactory and reasonable through routes and joint rates now exist for the traffic of complainants. In the answers of several defendants they say that they neither admit nor deny the allegations of complaint, but in view of the decision of the Commission in certain cases, especially Star Grain and Lumber Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. Rep., 338, they submit the question as to whether complainant carrier is an industrial or tap line, or is a common carrier and entitled to through routes and joint rates, and whether the further payment of allowances to complainant carrier is lawful or reasonable, to the judgment and determination of the Commission. The answer of one defendant asserts that it had no doubt as to the legality and reasonableness of its allowances to the Manufacturers' Railway Company previous to the date of the decision above referred to, but in view of that decision has fears and doubts as to their legality since said decision. The answers of other defendants deny generally the allegations of complaint. The Iron Mountain avers that the Manufacturers' Railway Company was organized and its tracks constructed to serve the Anheuser-Busch Brewing Association alone, and that it is

and always has been owned and controlled by the same interests that own and control the Brewing Association; that it handles practically no traffic except for the Anheuser-Busch Brewing Association, and that the services of complainant carrier involve the switching of cars between industrial establishments reached by its tracks to the tracks of the Iron Mountain and the St. Louis Transfer Company, and is exclusively a switching service."

Upon the issues thus joined, evidence was taken before an Examiner of the Commission, and thereafter the case was set down for hearing before the Commission, and was submitted on December 1, 1910, on briefs and oral arguments on behalf of complainants and defendants.

Thereafter, on June 21, 1911, the Commission filed its Report (of that date) of its findings and conclusions, but made no order thereon (21 I. C. C. 304).

By said first Report, the Commission found and held, in part: that the Terminal Association dominates the principal terminal facilities in St. Louis; that it is owned and controlled by the trunk lines; that it or its proprietary or tenant lines own or control all bridges and ferries giving access to all terminals within and all lines directly entering St. Louis; that no interstate shipment can enter or leave St. Louis except over its lines or those of its proprietary or tenant lines; that the Manufacturers' Railway was developed in order to extend terminal facilities to an important industrial section of South St. Louis not theretofore having adequate terminal facilities; that the facilities furnished by the Railway were both reasonable and necessary to the shipping public of South St. Louis; that it was not only holding itself out to the public as a common

carrier, but was engaged as such in rendering to the public a substantial service; and in that connection said (p. 312):

> "The right of such a carrier to participate in through routes and joint rates and share in the earning of such rates with others, is a wholly different question and one clearly within the purview of the statute, and under the jurisdiction and control of the Commission, as expressly provided in the Act. The purpose of the Act in this respect must be fulfilled by action appropriate to the end in view and at the same time effective to prevent unjust discrimination in any form, enforcing reasonable requirements and limitations in respect to the establishment of through routes and joint rates and the sharing of the earnings thereunder consistently with all other provisions of the statute in such manner as will result in substantial justice to all parties in interest, and the observance of the standards of the law in the public interests."
>
> "It seems clear that the theory of the law is that these beneficent and just purposes can be accomplished without the assumption on the part of the Commission to outlaw any common carrier by rail at common law as modified by constitutional or statutory authority, and thus put it out of business or deny its use to the public, so long as it is willing to hold itself out as a common carrier and perform its functions as such."

And the Commission concluded as follows (p. 313):

> "In view of all the facts, circumstances and conditions bearing upon this question, we have no doubt that the Manufacturers' Railway Company is in fact a common carrier at common law, notwithstanding any modification thereof, and therefore within the provisions of the first section of the Act to regulate commerce, and that the payment to it of a reasonable and just proportion of

the St. Louis rates for the terminal services rendered by it is not unlawful."

The Commission further said (p. 313):

> "From the inception of the Manufacturers' Railway Company, in 1887, to 1910—23 years—the defendant carriers uniformly absorbed these charges. The public on its lines have been in this respect on the same footing as have been the shippers located adjacent to the lines, which now constitute the Terminal Association or its subsidiary and proprietary lines. As long as the lines of the Manufacturers' Railway were under lease by the Iron Mountain they were practically a part of the terminal system of the city, operated and controlled by the community of interest of the trunk lines, the Iron Mountain being a party to the terminal agreement. The record does not state what the amount of absorption was, but as the Iron Mountain rendered the service, it received out of the St. Louis rates, whatever allowance was made when the traffic was destined to or from a point not on its own lines."

In respect of the further matters complained of as affecting the Railway and shippers over its lines, the first Report further found and held (p. 314): that *through said tariff changes*, effective March 1, 1910, *the transportation status* of the shippers over the lines of the Railway *had been completely changed*, since they did not thereafter receive the service of the Railway on payment of the St. Louis rates; that the trunk lines *had made no effort to justify such an increase* in transportation charges; that if said shippers should be

> "compelled to pay for the service of the Manufacturers' Railway in addition to the St. Louis rates, they will be placed at a serious disadvantage in competition with other shippers located on the

lines of other terminal facilities where the terminal charges are uniformly absorbed out of the St. Louis rates."

Concerning the complainant's charge that the trunk lines by their Acts complained of, had subjected shippers to unreasonable *increased rates*, and had created *unjust discrimination* and disadvantage, the Commission in said first Report found, and held (p. 314):

> "On the whole record we are of the opinion and find that the action of defendants in cancelling the said divisions and absorptions, which have been for many years included in the St. Louis rates, has subjected complainant shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges and to undue discrimination and disadvantage. This has been accomplished by cancelling what were in effect joint rates or charges and leaving in effect what are found to be unjust, unreasonable and discriminatory charges."

The concurring opinion of Commissioner Lane, which constituted a part of said first Report, contained the following (italics ours); p. 316:

> "The *line carriers have combined* and *established a terminal* which includes a great body of tracks, stations, warehouses, industrial spurs, and other terminal facilities. These are availed of by the carriers entering the city upon an agreed basis. *It is proposed by these lines* that *this terminal shall be a monopoly* and that *the rates of freight* stated in the tariffs shall *include delivery* within this terminal. They *cancelled the allowance* to the Anheuser-Busch road, the plant herein, *because they feared that a rival company* was being developed."

Having thus determined in favor of the Railway and of the complaining shippers, all of said questions affecting them, the Commission did not determine the further question which affected the Railway alone, namely, the amount of the divisions or allowances which might reasonably be paid to it out of the St. Louis rates, but reserved for further consideration, that and one other question, saying (21 I. C. C., at page 316):

> "The record before us does not present a sufficient basis for a satisfactory determination of the question as to the reasonable and just division or allowance to the complainant carrier, and the further question as to whether a part of the service performed by it is or is not plant facility service within the principles enunciated in the cases above referred to. Respecting these questions further investigation by the Commission will be made."

Thereafter, the Commisson set down the cause for the taking of further testimony before an Examiner, at which the Railway and the other complainants, and one of the defendants, Louisville & Nashville Railroad Company, introduced evidence, said defendant seeking thereby to have the Commission re-open, re-consider, and re-decide the matters already decided, as well as the matters above referred to as those which had been reserved for decision. Thereafter the cause was again set for hearing before the Commission, and was heard and submitted on January 18, 1913, upon all of the testimony (original and supplemental) theretofore taken, and upon briefs filed on behalf of the Railway, and its co-complainants, and of the Louisville & Nashville Railroad Company.

Thereafter the Commission made and filed its second report, dated June 21, 1913 (28 I. C. C. 93), but made no order thereon.

In said second report the Commission reconsidered the question whether the Railway is "a common carrier" subject to the provisions of the "Act to regulate commerce," and also reconsidered the question whether the cancellation of tariffs by the trunk lines had caused undue preference and discrimination against the Railway or the complaining shippers, and in that connection stated its findings of fact, in respect of which it is respectfully submitted that the Commission *did not find any substantial fact which was in conflict with its findings evidenced in the first report,* but it *did change to some extent its conclusions of law applicable to such facts.*

In its second report, the Commission, while holding and concluding (page 105), that the "Railway is a common carrier subject to the Act as held in the previous report," further concluded (page 105):

> "That the payments formerly made out of their through rates by the trunk lines to the Railway were absorptions in compensation for services rendered to the trunk lines and were in no sense divisions of joint rates as for services rendered for the shippers served by the Railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expense of similar delivery by the Rail-

way upon the rails of that carrier are not subjecting the shippers located on and served by the Railway to undue prejudice and disadvantage; that, therefore, the only lawful order the Commission can make, is in the establishment of joint rates if the conditions are such as to warrant that action; that under joint rates so prescribed that part of the service performed by the Railway would be in the contemplation of the Act a service performed for the shipper to be paid for by the shipper and could not be construed by the Commission to be a service rendered for the trunk lines, the expense of which could be required by the Commission's order to be borne by the trunk lines; that the rates of the trunk lines not being shown to be unreasonable in themselves, such joint rates with the railway must therefore necessarily be in excess of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis."

In respect of the contention of the Railway and of the complaining shippers that undue discrimination against it and them had resulted, the Commission in the second report held and said (pages 103 and 104):

"The allegation of undue discrimination is based primarily upon the practice of the trunk lines of absorbing the charge of $3 per car assessed by the Terminal Railroad Association against them for passing over its terminals and of their absorbing each other's switching charges under the reciprocal arrangements existing between them as members of that Association. It was to enable them to enter St. Louis and to furnish these reciprocal advantages and to afford a uniform rate to all shippers upon their lines in St. Louis that the trunk lines formed the Terminal Associa-

tion, and the relative advantages afforded by these facilities and the relative necessity to the trunk lines of acquiring them should, we think, be given due consideration in the determination of whether the trunk lines unduly discriminate against shippers on the Railway in refusing to absorb its charge while contemporaneously absorbing the charge of the former. Delivery of freight is made at the St. Louis rate on the rails of the St. Louis Transfer Railway, which as stated is owned by certain of the proprietary lines of the Terminal Association through the Wiggins Ferry Company, and on the rails of the Iron Mountain, one of the proprietary lines of the Terminal Association, within two or three blocks of the whole length of the Second street line of the Railway, and in addition the rails of the Iron Mountain extend west to and across the northern end of the Second street line of the railway and in a few instances serve even the same industries by direct spur track. In addition to these deliveries in this section of St. Louis on what are in fact their own rails, with attendant reciprocal advantages to them, the trunk lines are sought to be required by this Commission's order to go a step further and bear the expense of the delivery on the rails of a separate and independent terminal connection which is not in position to render such reciprocal services and which, by its own statement, is endeavoring to construct an extensive terminal system to rival the trunk lines' own facilities as represented in the Terminal Association."

And on page 105: "In this connection it may be argued by complainant that the Terminal Association is a separate corporation from the trunk lines. This is true. But it is also true that intermingled with the lines controlled by it as a separate corporation are included in the same reciprocal arrangements certain terminal lines owned or controlled by its proprietary or tenant lines di-

rect, as is the Wiggins Ferry Company, as well as the various terminal properties of the individual trunk lines themselves, all of which together constitute the united terminals of all the trunk lines entering the city. There is therefore here presented a different situation from that which would be presented if we had under consideration two or more independent terminal systems in St. Louis, and the trunk lines absorbing the charge of one or some of them and refusing contemporaneously to absorb the charge of the others under like conditions."

And on page 110: "We have found that there is no undue discrimination against shippers located on or served by the Railway chargeable to the trunk lines by reason of their cancellation of these allowances, and that in the absence of such undue discrimiation the Commission can make no order in reference thereto."

Concerning the complaint that the action of the defendants had been pursuant to their purpose to prevent a rival terminal company from developing or existing, and that such purpose was pursuant to the unlawful conspiracy and monopoly, above referred to, the Commission concluded and held (page 110):

That it was "unnecessary and inappropriate to discuss the question whether the Terminal Railroad Association of St. Louis is a monopoly in violation of the Sherman Anti-Trust law, as the determination of that question is quite apart from this proceeding and is not controlling of the issues before this Commission";

And (page 109): "It is unnecessary in this proceeding to discuss in detail the Terminal Railroad Association of St. Louis or, otherwise than to state it, to indulge in comment upon complainants' contention that the trunk lines of St. Louis, instead of the owners of the railway, and its ship-

pers for whom its services are rendered, should be compelled to develop this carrier into a formidable independent terminal system to rival their own."

About the time of or after the first Report of the Commission, some or all of the trunk lines again agreed with the Railway upon through and joint rates, with divisions, allowances and practices affecting interstate traffic moving over its lines, pursuant to which it again received a division or allowance (at a flat rate of $4.50 per car, with the same division on coal, of ten cents a ton as before, March 1, 1910) out of the St. Louis rates, for its services; and the shippers over the Railway again for a time made and received their shipments at the St. Louis rates, *i. e.*, until the second Report was made, whereupon such new tariffs were suspended or canceled.

Upon the filing of said second Report, the Railway and also the complaining shippers filed with the Commission their several applications for a rehearing. Said applications were not granted. No new hearing was granted for the taking of evidence, but the case was set down for re-argument, and after arguments were had thereon, the Commission, on November 5, 1914, filed its report dated July 10, 1914 (32 I. C. C. 100), and at the same time made the orders which are complained of in this suit.

By said third Report the Commission confirmed its findings and conclusions in its second Report, "as interpreted" in its third Report, and among other things, thus made final findings and conclusions to the effect:

(a) That the Manufacturers' Railway is a common

carrier subject to the provisions of the "Act to Regulate Commerce."

(b) That although the trunk lines, at the time they cancelled the tariffs and allowances to the Railway were absorbing the terminal charges of the Terminal, and of the trunk lines performing terminal services, and did not discontinue the latter absorptions when they cancelled the allowances to the Railway, they did not thereby subject the Railway or complaining shippers to undue prejudice or disadvantage.

(c) That the amounts formerly paid by the line carriers to the Railway (32 I. C. C. 102), "were voluntary allowances and could not be considered to be divisions of joint rates which the Commission could by affirmative order establish."

(d) "That the separate rates of the trunk lines and of the complainant Railway," being by the Commission *assumed* "to be *prima facie* reasonable, any joint rates which" the Commission "could by affrmative order require the carriers in the through route to establish would necessarily be higher than the rates of the trunk lines to and from St. Louis by the amount of that part of the through charge which would accrue to the complainant Railway."

(e) That while the Commission did not have the power *to require* the trunk lines to participate with the Railway in the St. Louis rate, the trunk lines *might voluntarily* do so, provided the division going to the Railway was not so excessive as to amount to a rebate or to give to its owners an undue preference.

(f) That if the trunk lines did not elect voluntarily to divide the St. Louis rate with the Railway, then

they must put into effect rates by which shippers would have to pay, in addition to the St. Louis rates, the charges of the Railway, but not in excess of $2.50.

(g) That the said conclusions of the Commission were not in conflict with the decree or decision of the Supreme Court of the United States in the case of United States vs. Terminal Railroad Association, 224 U. S. 383.

The Commission's order (into which it embodied its first, second and third Reports), was as follows:

> "This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on June 21, 1911, made and filed a report containing its findings of fact and conclusions thereon; and having, on June 21, 1913, made and filed a supplemental report containing its further findings of fact and conclusions thereon; and having on the date hereof made and filed its report upon reargument; which said reports are hereby referred to and made a part hereof;
>
> It is ordered, that the above-named defendants and the Manufacturers' Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required, on or before January 1, 1915, to cease and desist from charging, demanding, collecting or receiving their present rates on traffic moving in through transportation between points on the line of said Manufacturers' Railway Company and points on the lines of defendants in states other than Missouri, to the extent that said rates exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and the same points in states other than Missouri, by more than $2.50 per car.

It is further ordered, that the above-named defendants and the Manufacturers' Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required to establish and put in force, on or before January 1, 1915, and to maintain in force thereafter for a period of not less than two years, and apply to said traffic, rates which shall not exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and points in states other than Missouri by more than $2.50 per car."

On December 7, 1914, the Commission modified above order by inserting in the last paragraph thereof, immediately after the words "on or before January 1, 1915," the words "upon notice to the Interstate Commerce Commission and the general public by not less than three days' filing and posting in the manner prescribed in Section 6 of the Act to Regulate Commerce."

The making of that order was followed by the institution in the District Court, of this suit, in which the order is sought to be set aside in part and enjoined in part, for the reasons which appear in the following specifications of error, and brief of the argument, and argument.

SPECIFICATIONS OF ERROR.

1.

That the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, erred in dismissing the said suit, and in entering a final decree in favor of the said respondents, United States of America and Interstate Commerce Commission for their costs against petitioner and intervening petitioners.

2.

That said Court erred in not holding that the Act to Regulate Commerce required the trunk line carriers to prove the reasonableness of the advanced rates to St. Louis (which became effective upon the cancellation of the trunk lines' tariffs absorbing the switching charges of the Manufacturers' Railway), and that it was error for the Commission to assume the reasonableness of said advanced rates; and therefore the order of the Commission based thereon was arbitrary and contrary to law, and should have been set aside.

3.

That said Court erred in not holding, that in the absence of proof of the reasonableness of the advanced rates (to points on the Manufacturers' Railway and to St. Louis), established by the cancellation of the trunk lines' tariffs absorbing the switching charges of the Manufacturers' Railway, the Commission should have ordered said trunk lines to restore their former tariffs and continue the application of the St. Louis rates to points on said Railway, and that the order of the Commission as made, was therefore arbitrary, and unlawful.

4.

That said Court erred in not holding, that the maximum rate of $2.50 per car in excess of the St. Louis rates to points on the Manufacturers' Railway, as prescribed in said order of the Commission, was unreasonable *per se* and discriminatory, and that said order was therefore arbitrary, unlawful and void.

5.

That said Court erred in not holding, that the order of the Commission was void to the extent that it permits or requires the trunk lines to charge, collect or receive, rates in excess of the St. Louis rates on interstate traffic moving to or from points on the lines of the Manufacturers' Railway.

6.

That said Court erred in not holding, that the Commission had acted arbitrarily and contrary to law, in basing its order upon the erroneous legal conclusion that it did not have the power upon the record before it, to compel the trunk lines to extend their services to shippers on the lines of the Manufacturers' Railway, at the St. Louis rates.

7.

That said Court erred in not holding, that the Commission had acted arbitrarily and contrary to law, in basing its order upon the erroneous legal conclusions that the Commission did not have power upon the record before it to compel the trunk lines to apply the St. Louis rates to points on the lines of the Manufacturers' Railway, and that consequently the privilege to shippers on the lines of said Railway, of enjoying the St. Louis rates (without any addition thereto) was not a matter of right, but was merely one of grace to be extended or denied by the trunk lines at their volition, although the trunk lines were permitted by said order contemporaneously to apply the St. Louis rates to all other shipping points in the city of St. Louis, located on the lines of every other ter-

minal carrier rendering terminal transportation services in St. Louis.

8.

That said Court erred in not holding, that the order of the Commission was void in requiring the Manufacturers' Railway Company to join the trunk lines in the establishment of rates on interstate traffic to points on its lines, in excess of the St. Louis rates.

9.

That said Court erred in not holding, that the order of the Commission in permitting the trunk lines to absorb the switching charges of the St. Louis Terminal Railroad Association and of its subsidiary and proprietary lines, for the moving of traffic to or from points within the switching limits of St. Louis, and in not requiring said trunk lines contemporaneously to absorb the reasonable switching charges of the Manufacturers' Railway Company for performing a like service for said trunk lines within said switching limits, was unlawful and in violation of Section Three of the Act to Regulate Commerce.

10.

That said Court erred in not holding, that the order of the Commission, in establishing a maximum rate higher than the St. Louis rate, to points on the lines of the Manufacturers' Railway, was unlawful in that it gave an undue or unreasonable preference or advantage to shippers located on other lines of railway within the city of St. Louis, and subjected the shippers located on the lines of the Manufacturers' Rail-

way to undue or unreasonable prejudice or disadvantage, in violation of Section Three of the Act to Regulate Commerce.

11.

That said Court erred in not holding, that the Commission acted arbitrarily, and without substantial proof thereof, and contrary to law, and contrary to the law applicable to the very facts found by the Commission, in concluding that the action of the trunk lines in refusing to apply the St. Louis rates to points on the Manufacturers' Railway while contemporaneously applying such rates to all other shipping points within the switching limits of St. Louis, was not discriminatory against said Railway, its shippers or the locality in which said Railway operates, and said Court erred in not holding that the order of the Commission, based upon said erroneous conclusion, was arbitrary, unlawful, and void.

12.

That said Court erred in not holding, that the Commission erred as a matter of law, and acted arbitrarily and unlawfully in basing its order upon its erroneous holding that the decree of the District Court of the United States, for the Eastern Division of the Eastern District of Missouri, and the decision of this Court, in the case of the United States vs. Terminal Railroad Association, of St. Louis (224 U. S. 383), did not require the said Commission to treat said Terminal Association and its operating subsidiaries as terminal carriers competing with the Manufacturers' Railway in performing terminal switching in St. Louis.

13.

That said Court erred in not holding, that the Commission had acted arbitrarily and contrary to law, in basing its order upon the erroneous legal conclusion that the terminal facilities in St. Louis, of each of the several trunk lines which render terminal transportation services in St. Louis in connection with other trunk lines having the line haul, should be treated as extensions into St. Louis of the rails of each and all of said trunk lines having the line haul, instead of being treated as separate terminal carriers competing (in respect of terminal transportation services) with the Manufacturers' Railway, with the Terminal Railroad Association and its operating subsidiaries, and with each of the other trunk lines performing terminal switching in St. Louis.

14.

That said Court erred in not holding, that the Commission erred as a matter of law and acted arbitrarily in holding that under no circumstances is a carrier entitled to reparation and in denying a hearing on the claim of the Manufacturers' Railway Company for reparation, and in ignoring the prayer of the complaining shippers for reparation.

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POINTS AND AUTHORITIES.

I.

REASONABLENESS OF INCREASED RATES ASSUMED, NOT PROVED.

THE FINDING OF THE COMMISSION THAT THE ADVANCED RATES ESTABLISHED BY THE DEFENDANT CARRIERS ON MARCH 1, 1910, WERE REASONABLE *PER SE*, WAS WITHOUT EVIDENCE TO SUPPORT IT:

Assignments of error, one to five inclusive, relate to the issue presented to the Commission concerning the *reasonableness per se* of the *new* (advanced) *rates* to and from points on the Railway made effective from and after March 1, 1910, *by the cancellation* by the trunk lines of their respective tariffs which *absorbed* the charges of the Railway, or (in the case of two commodities) granted it *divisions* of rates.

(1) *The reasonableness per se of the advanced rates, made effective by the cancellation of said tariffs, was in issue before the Commission.*

The analysis of the complaint made by the Commission, clearly demonstrates that such issue was before it. On pages 305, 306, of its first Report (21 I. C. C.) the Commission says (italics ours):

> "The petition alleges that there are many industries in the southern part of St. Louis served by the Manufacturers' Railway that are not served by any other railroad, and others which are served

by it, as well as by other railroads; that prior to March 1, 1910, there existed through routes and joint rates over the lines of defendant carriers and complainant Manufacturers' Railway Company to and from points on the line of said complainant company; that on December 31, 1909, defendants notified the Manufacturers' Railway Company that after March 1, 1910, no allowance would be made to that company out of the St. Louis rate for its service; that said action by defendants was the result of an unlawful combination and conspiracy in violation of the Sherman Anti-Trust law; that pursuant to said action defendants' then existing tariffs were canceled, and since that date the St. Louis rates have not been applicable to and from points on the line of the Manufacturers' Railway, and that the public *served by the lines of that company has been subjected to unreasonable charges.*"

And again:

> "It is further alleged that the refusal of defendants to longer continue through routes and joint rates is *unjust, unreasonable and unlawful,*" etc.

Said issue was not only presented by the pleadings, but was actually passed upon by the Commission.

On pages 314, 315, of said Report (21 I. C. C.) is the following finding:

> "On the whole record we are of the opinion *and find* that the action of defendants in cancelling the said divisions and absorptions, which have been for many years included in the St. Louis rates, *has subjected complainant shippers and a considerable portion of the public of south St. Louis to the payment of unjust and unreasonable* transportation charges and to undue discrimina-

> tion and disadvantage. This has been accomplished by cancelling what were in effect joint rates or charges and leaving in effect what are found to be *unjust, unreasonable* and discrimatory charges."

(2) *The cancellation by the trunk line carriers on March* 1, 1910, *of their tariffs absorbing the switching charges of the Manufacturers' Railway Company constituted an "increase" of their former rates to and from points on the line of that Railway.*

In re Switching at Arcade, 30 I. C. C. 501 at 503, the Commission held, that the cancellation of switching charges constituted an advance in rates.

In *Merchants & Mfg. Ass'n vs. B. & O. R. R. Co.*, 30 I. C. C., 388 at 389, involving store-door delivery, the Commission said:

> "It is alleged that the withdrawal (of store delivery) amounted substantially to an increase in the rates and that the burden is upon respondents to justify such increase. The rates in the tariffs have not been changed but, as was observed in the Washington case (27 I. C. C. 347) the amount of service given is less; and it is *as much an increase of rate to give less service for the same amount as to charge a greater amount for the same service.* Following the principle of that case, we hold to that to the extent of the reasonable cost of store-door delivery, the burden is upon respondents to justify the withdrawal of the service and the consequent increase of cost to the shipper."

The Commission has held that the following acts of carriers constitute advances in rates:

Withdrawal of proportional rates; *Rates on Grain and Grain Products,* 30 I. C. C. 16.

Increase in minimum weight; *Minimum weight on fresh meats and other commodities,* 30 I. C. C. 349.

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Change of refrigeration charge basis; *Refrigeration Charges, etc.,* 29 I. C. C. 653.

Change in transit rules; 29 I. C. C. 70, 78.

(3) *The burden rested on the trunk line carriers to justify the increased rates effective March* 1, 1910.

Section 15 of the Act to Regulate Commerce provides, that:

> "At any hearing involving *a rate increased* after January 1, 1910, or of a rate *sought to be increased* after the passage of this Act, the *burden of proof* to show that the increased rate or proposed increased rate is *just and reasonable* shall be *upon the common carriers,* etc."

Though protest is made after an increase in rates has become effective, nevertheless, the burden of proof as to its reasonableness is upon the carrier; *Wickwire Steel Co. vs. R. R. Co.,* 30 I. C. C. 415, at 419.

The burden to show that proposed increased terminal charges are just and reasonable is upon the respondents; *Switching at Baltimore,* 30 I. C. C. 581, at 583.

The burden is upon the carriers to justify proposed higher rates; *The Five Per Cent Rate Case,* 31 I. C. C. 351, at 355.

Even though a tariff does not actually carry an advance in rates, but is instead the cancellation of an illegal tariff privilege, the burden of proving the reasonableness of the increased rate is upon the carriers; *Empire Coke Co. vs. B. & S. R. R. Co.,* 31 I. C. C. 573, at 582.

The statute casts upon the carrier the burden of justifying any increased rates; *Coal Rates,* 30 I. C. C. 505, at 508.

(4) *In the absence of proof to the contrary a presumption arose from the long continuance of the former rates, that they were per se reasonable.*

From April 16, 1888, to March 1, 1910, the flat St. Louis rate included service to and from points on the Railway. For more than twenty years the trunk lines had thus voluntarily extended the St. Louis rates to shippers on the Railway, and during all of that time had absorbed into said rates the switching charges of the Railway. That fact was found by the Commission, thus:

> "While the Manufacturers' Railway was operated by the Iron Mountain, during twenty-one years and also when operated under the tariffs which permitted an allowance to the Manufacturers' Railway itself in 1909 until March 1, 1910, delivery has been made to the public served by it at the St. Louis rate" (21 I. C. C., 304 at 310).

The Commission, in *Memphis Freight Bureau vs. L. & N. R. R.*, 26 I. C. C. 402, at 404, held that:

"the long maintenance of a rate established its presumptive reasonableness."

And in *Robinson Land & Lbr. Co. vs. M. & O. R. R.*, 26 I. C. C. 422, at 429, it held that:

"A presumption of reasonableness arises from the long existence of a rate."

It was also held in *Lbr. Rates to Eastern Points*, 31 I. C. C. 244, at 253, that the long maintenance of a given rate is an admission of its reasonableness, and where, on the strength of a given rate, capital has been invested and industrial conditions have become established, it cannot be discontinued without taking into account its effect upon such commercial and industrial conditions.

This Court in *I. C. C. vs. C. B. & Q. R. R. et al.*, 186 U. S. 320, on page 336, said:

> "There is also no room for question that during the many years these rate sheets were in force the carriers, under their contracts to carry to Chicago, delivered carloads of cattle to the stockyards without making any charge other than that which was specified in the through rate. Under these circumstances, in the absence of proof, can it be assumed that the carriers were, for the many years in question, gratuitously performing the terminal services? That such assumption may not be indulged in results from the ruling in Covington Stock Yards vs. Keith, 139 U. S. 128, where it was decided that, as for a through rate to a given point, the carrier contracted to deliver at that point, the presumption was that the through rate included adequate compensation for the services

rendered at the point of delivery. Applying this principle, it results that the through rate existing prior to June 1, 1894, certainly in the absence of proof to the contrary, must be presumed to have provided in and of itself compensation for the services rendered in making delivery at the stock yards."

In re Rates in Chicago Switching District, 34 I. C. C. 234, 247 (decided June 7, 1915), the Commission said:

"For each rate, a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, the delivery at that point is in no sense a 'free service.' The carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged *it must bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination.*" (Italics ours.)

In *Lighterage and Storage Regulations at New York*, 35 I. C. C. 47 at 68, the Commission said, *inter alia*:

"The assessemnt of any charges for terminal handling, the *service having heretofore been performed under the freight rate, would have the effect of increasing that rate;* and a proper justification of such an increase would involve consideration both of the line haul and the terminal service to be performed under the increased rate. There is no evidence to warrant any finding upon the adequacy of the compensation now received by the carriers for their complete service. We make no finding as to the adequacy of the present rates on any of this freight; our finding is that an increase in rates has not been justified by the

carriers in this proceeding, and that the method of increase proposed is improper."

"The Commission strongly favors the analysis of service and rates as an aid to their measurement and comparison. But it holds that, where a terminal service has heretofore been treated by the carriers as a part of the transportation service covered by the freight rate, and regularly performed by them, they may not now segregate that service and assign to it a separate charge without taking into consideration, in order to justify such charge, the entire through service of which it forms a part and the compensation heretofore received for such through service."

"As the railroad companies have made an allowance to shippers for many years out of their rates, there is a presumption that the rates covered that allowance and that its discontinuance should be accompanied by a relinquishment of revenue formerly provided. There is nothing in this record to overcome that presumption. That the proposed rule would result in very substantial additions to transportation charges is beyond question."

(5) *There is no evidence in the record tending to prove the reasonableness of the advanced rates*:

The Commission itself declares that the record upon which it rendered its first opinion contains no evidence tending to sustain the reasonableness of the advanced rates. We quote from page 314 of said first Report (21 I. C. C. 304):

"It is apparent therefore that since March 1, 1910, the transportation status of the public located on or adjacent to the lines of the Manufacturers' Railway has been completely changed as they do not now receive the service of that carrier on payment of the St. Louis rates. *No testimony whatever was introduced on behalf of the*

> *defendants, and therefore there was no effort on their part to show any change in circumstances and conditions which would justify* what has in fact *resulted in an increase of transportation charges* to the public located on the lines of the complainant." (Italics ours.)

After that opinion had been rendered additional evidence was taken, and in due time the Commission rendered its second Report or opinion (28 I. C. C. 93).

However, we state without fear of successful contradiction, that the record containing said additional evidence will be searched in vain for any evidence which justifies the reasonableness *per se* of these advanced rates. That record is as barren of such testimony as was the record when the first opinion was rendered.

(6) *The reasonableness of the advanced rates was "assumed" by the Commissions*:

The fact that the Commission in its second Report expressly states, on page 103 of said report (28 I. C. C.) that:

> "*Assuming* the rate" (the advanced rate) "of the latter" (trunk lines) "*to be reasonable in itself,* such joint rate must necessarily be higher than that rate by the amount of the through rate accruing to the Railway,"

conclusively demonstrates the absence of proof by the trunk lines of the reasonableness of said advanced rates. A finding based on such *assumption* is beyond the power of the Commission, and vitiates the order based thereon. The question whether the new (advanced) rates, which extended only to the end of the rails of the trunk lines whereas formerly such rates

extended beyond the end of said rails to points on the line of the Railway, were reasonable *per se* was a vital issue.

In re Rates in Chicago Switching District (34 I. C. C. 234, 241) the Commission said:

> "As stated, no evidence is offered tending to justify the proposed increased rates or charges which would result to industries served by the tunnel and lighterage companies."

And page 242:

> "For each rate, a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, the delivery at that point is in no sense a 'free service.' The carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged *it* must *bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination.*"

The denial of the prayer of the complainants "that the trunk lines be *compelled* to extend their St. Louis rates to and from points on the Railway," by restoring former divisions and allowances, was thus predicated by the Commission on a conclusion which required proof (under the Act), but which, in the absence of proof, the Commission *assumed.*

In its second Report the Commission held, that while the trunk lines might *voluntarily* extend their service to points on the Railway at the *St. Louis rates,* said carriers could not be *compelled* to do so; the reason

for such conclusion being said *assumption* that the rates of the trunk lines to the *ends of their own rails, were reasonable per se,* and that therefore for any service beyond said rails they would be entitled to additional compensation. Hence the *assumption* of the reasonableness of their rates *to the end of their rails,* formed the foundation of said conclusion.

For more than twenty years prior to March 1, 1910, the former rates of the trunk lines had included such service *beyond their own rails* (first Report, 21 I. C. C. 313), and under their new tariffs said carriers were performing a *less* service for the *same* compensation, which was equivalent to *an advance in their rates.* A proper determination, therefore, of the issue of the *reasonableness per se* of the advanced rates was all-controlling.

Such finding, having been made without evidence, the order based thereon was void and should have been set aside.

This Court held in *I. C. C. vs. L. & N. R. R.,* 227 *U. S.* 88, *at* 91, that:

> "A finding without evidence is arbitrary and baseless. A finding without evidence is beyond the power of the Commission. The order based thereon is contrary to law and must in the language of the statute be set aside by a court of competent jurisdiction."

In *Florida East Coast Railway vs. U. S., et al.,* 234 *U. S.* 167, this Court held, that the enforcement of an order of the Interstate Commerce Commission reducing gathering rates for citrus fruits and vegetables from production points in Florida to a basing point

in the same State, will be enjoined where it was rendered without any evidence to support it; such a record presenting a question of law which it is the duty of the courts to examine and decide.

(7) *Not only did the Commission thus arbitrarily "assume" the reasonableness per se of said advanced rates, but it also erred in applying the rule of evidence as to the "burden of proof"*:

From its second opinion it appears that the Commission not only disregarded Section 15, by which the "burden of proof to show that the increased rate * * * is just and reasonable" was imposed on the carriers proposing to make such an increase, but the Commission based its finding of the reasonableness of the advanced rates on a proposition of law directly in conflict with Section 15, viz. (28 I. C. C. p. 106, italics ours):

> "That the rates of the trunk lines *not being shown* to be *unreasonable* in themselves, such joint rates with the Railway must therefore *necessarily* be in excesss of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the Railway."

And on page 102 of the third opinion (32 I. C. C.) the Commission in construing its former opinion, said:

> "We held * * * that the separate rates of the trunk lines and of the complainant Railway being *necessarily* regarded upon the record before us as *prima facie* reasonable, any joint rates we could by affirmative order require the carriers in the through route to establish would *necessarily* be higher than the rates of the trunk lines to and from St. Louis by the amount of that part of the

through charge which would accrue to the complainant Railway."

That is to say, notwithstanding the plain provisions of the statute imposing upon the trunk lines the burden of proving the increased rates to be reasonable, the Commission found the advanced rates to be reasonable *because the "complainants" had failed to prove them unreasonable.*

(8) *The advanced rates were presumptively unreasonable because established not by free competition but by joint and concerted action of the trunk lines, pursuant to their conspiracy to further the unlawful monopoly known as the Terminal Railroad Association of St. Louis.*

The Terminal Monopoly and the Sherman Act. Before discussing the above contention we deem it proper to explain the attitude of appellants before the Commission, the District Court, and this Court, concerning the relation of the Terminal Monopoly and of the Sherman Anti-Trust Act, to the questions involved in the above contention, and to the later contentions in respect of discrimination.

Such an explanation is prompted by the fact that not only the Commission (as shown in its reports), but counsel for the United States (as shown in its answer herein), have entirely misapprehended appellants' contentions upon those two matters; thus the answer herein of the United States presents as its first defense, the contention that the District Court (as successor of the Commerce Court), had no jurisdiction in the case at bar *to grant any relief based* upon those averments of the petition which relate to the

Sherman Anti-Trust Law, or which seek to attack the Terminal Railroad Association as an unlawful monopoly or combination violating the act to protect trade and commerce against monopoly.

The averments referred to (in the petition in the case at bar, and the same explanation will apply to those in the complaint before the Commission), were, in brief: that the tariff cancellations complained of were made by concerted action between the trunk lines, pursuant to and in furtherance of an unlawful conspiracy, violative of the Sherman Act, by which the trunk lines sought to effectuate the unlawful monopoly which they had in the Terminal, and to stifle competition by the Railway, and to prevent it from being or becoming a competitor of the Terminal.

Appellants did not seek before the Commission or the District Court, and do not seek in this Court, to have the Terminal Railroad Association, either directly, or through its proprietary lines (which were defendants before the Commission), *declared a monopoly*, or *enjoined* or *punished* in any way *as a monopoly*. And we respectfully submit that their pleadings are not properly open to any such misconstruction.

They did contend before the Commission and the District Court, and they respectfully contend here, that the Sherman Act is pertinent and necessary to be taken into consideration in this case, because it is a part of "the law of the land," and as such applies to railroad companies in their relations with each other and with shippers, just as though it were embodied in the Act to Regulate Commerce. While the Sherman Act does not confer special jurisdiction on the Interstate Commerce Commission, or

the Commerce Court, or the District Court in reviewing orders of the Commission, it does (as a part of the existing law which must be enforced and applied by all administrative and judicial tribunals having to do with a state of facts in which the question arises), *enter into the duties and powers of the Interstate Commerce Commission as a limitation upon and qualification of them*, and it *enters also into the duties of carriers toward each other* and *toward the shipping public, as a limitation and qualification upon them.*

Therefore we respectfully submit that the averments relating to alleged violations of the Sherman Act, while not embodied in the petition *for the purpose of invoking any special remedies provided by that act*, are relevant to the case at bar as among the facts which this Court may and should take into consideration in determining what were the duties of the line carriers toward the Railway and toward shippers over its line, and what rights of the Railway and of shippers, *should have been recognized and enforced by the Commission* and by the District Court, in applying to the record before it, *the law applicable thereto*, whether under the express provisions of the Interstate Commerce Act, or of the common law (to the extent that it has not been modified by statute), or by statute law including the Sherman Act.

The particular relevancy to the question of discrimination, of the decision in the Terminal case, and of the averments herein relating to the conduct of the Terminal Association as in violation of the Sherman Act, will be explained later in that part of this brief which treats of "discrimination."

It will be appropriate, however, to explain here, the

nature of appellants' contentions before the Commission, concerning the effect (upon the legality of the new and increased rates), of the fact that the making of such increase by concerted action was the fruit of an unlawful conspiracy, and was not the result of free and open competition between the trunk lines, untrammeled by such conspiracy.

Appellants contended before the Commission and respectfully contend here: that while the *motives* or *reasons* which in fact prompted the trunk lines to cancel their divisions and allowances to the Railway, and the *method* in which they accomplished it (*i. e.*, whether lawful or unlawful), were not, for the purpose of the case before the Commission, necessarily controlling *upon the lawfulness* of such cancellations, or the lawfulness of the then refusal of the trunk lines to restore the former divisions or allowances, they *were material elements to be considered by the Commission in determining whether or not said attitude and action of the trunk lines were reasonable and proper;* that competition by carriers is favored by the law, and competition between carriers, in order to be so favored, must be free and untrammeled; that when an increase in rates results merely from free competition (as distinguished from an increase in rates resulting from an unlawful conspiracy), it is ntitled (in the absence of statute providing otherwise) to the *presumption of reasonableness,* because presumptively the change was responsive to the reasonable demands, and subject to the reasonable restraints, *imposed by such competition;* and that, on the other hand, when *a change in rates* is shown to have resulted from unlawful concert of action between competing carriers, prompted by motives which *preclude a consideration of the reason-*

able merits of such action, then no presumption of reasonableness can attach, and, in such a case, the circumstances showing *motive* and *unreasonableness* become a pertinent and important subject of inquiry, as tending to show unreasonableness.

Therefore, and to that extent, it was relevant in the case before the Commission, and is relevant in the case at bar, to take into account the averments and evidence (which was undisputed, having been shown by the testimony of President McChesney of the Terminal Association), that the action and attitude of the trunk lines was, and presumptively still is, pursuant to a purpose which was expressed by Commissioner Lane's first report, 21 I. C. C. 316, thus:

> "It is proposed by these lines that this terminal *shall be a monopoly,* and that the rates of freight stated in the tariffs shall include delivery within this terminal. They *cancelled the allowance* to the Anheuser-Busch road, the plant herein, *because they feared that a rival company was being developed.* * * * The railroads seemed *to have no doubt about their right to make the allowance until by its existence* the Manufacturers Railway threatened *to become a rival.*"

The rule contended for before the Commission, had prior thereto been firmly established by its decisions.

Thus: *in Central Yellow Pine Assn. vs. Ill. Cent. R. Co.,* 10 *I. C. C.* 505, 540, Commissioner Clements said:

> "We deem it unnecessary to express an opinion as to whether this concert of action in fixing the advance rate amounts to an unlawful agreement under the so-called 'Anti-Trust Act'—the enforcement of that Act being a matter properly cognizable by the Courts. *It is clearly, however, within*

the scope of our authority and duty to consider this joint or concerted action of the defendants in the aspect of its bearing upon the reasonableness and validity of the advanced rate, the result of that action. Where rates are established by concert of action and previous understanding between the carriers, it is manifest, whether or not there be a binding agreement to maintain such rates, that the element of competition is eliminated. Concert of action is wholly inconsistent with competition. The Interstate Commerce Law, it is conceded, *was intended to encourage normal competition.* The ground upon which competition is favored is that *it conduces to the reasonableness of rates.*"

And in *China & Japan Tr. Co. vs. Georgia R. R. Co.*, 12 *I. C. C. Rep.* 236, 241, Commissioner Prouty said:

> "We administer the Act to Regulate Commerce alone. The complainants assert that under the provisions of that Act this rate is excessive. In determining that issue we should inquire into the circumstances under which the rate was made. *If we find that it was not the product of free competition, but was the result of an agreement, this fact would rob the rate of the presumption of reasonableness which might otherwise attach, and should be considered by the Commission in determining whether the advance was justifiable.*"

Therefore, in the case before the Commisison and in the District Court, appellants contended, and in this Court they likewise contend, that the facts showing unlawful conspiracy violative of the Sherman Act, are proper to be considered as compelling the conclusion that the cancellation tariffs, which were filed by concerted action, the increase of rates resulting therefrom, and the attitude of the trunk lines

throughout toward the Railway and its shippers, are not entitled to the usual presumption of reasonableness and good faith as having resulted from free competition between carriers, but on the contrary were and are *presumptively unreasonable, unjust,* and *intended to be discriminatory,* because prompted by an unlawful purpose and sought to be effectuated by an unlawful concert of action, which robbed the attitude of each line of the aspects of either volition or reason, and which in its effect, was intended to suppress and destroy a threatened rival through the combined power and concerted action of all the members of the Terminal Monopoly.

(9) *In the absence of proof sustaining the reasonableness per se of the "advanced rates" of March* 1, 1910, *and in view of the presumption of the reasonableness per se of the former rates, and of the further presumption that the increased rates were unreasonable, the only valid order which the Commission could have made was a "mandatory" one commanding the carriers to restore their former rates*:

It was *the restoration of the former rates for which* complainants contended. That the Commission so understood, is shown by the following quotation from its second opinion, page 110:

> "As heretofore shown the prayer of the petition is for the establishment of 'through routes and through joint rates *as the same existed* prior to March 1, 1910' which means the establishment or re-establishment of the St. Louis rate with the previous absorptions." (28 I. C. C.)

Under similar circumstances such a course has been frequently followed by the Commission; *In the matter*

of advances of rates on soft coal (23 I. C. C. 518, at 519) the Commission said:

> "As the withdrawal of the through rates, leaving in operation the local rates *would increase* the charges on coal moving over that route, the defendants were under the burden of justifying their course and of showing that the resulting charges would be just and reasonable. But the record made at the hearing does not meet this requirement. In fact, *no effort was made* to show that the combination of locals *would be a reasonable* charge on this traffic, nor was any specific reason given for the cancellation of the joint through rates. We, therefore, find that rates in excess of those now in effect would be unjust and unreasonable. *To give effect to this conclusion, we shall require the defendants to maintain the present through routes and joint rates between the points in question.*"

In the *Chicago Switching Case*, 34 *I. C. C.* 234, the trunk line carriers attempted to cancel their tariffs making divisions or allowances out of the Chicago rates to certain terminal carriers of that city, and the Commission recognized that if such cancellations became effective, the result would be increased rates to and from stations on such terminals. On page 235 the Commission said:

> "If these cancellations are permitted to become effective the rates to and from stations of the tunnel company and of the lighterage company will, with certain exceptions to be noted later, be increased."

And upon failure of the trunk lines to justify such increase the Commission, by a "mandatory" order, required the carriers to continue the existing arrange-

ments. The language of the Commission was, as follows: (p. 242).

> "From all the facts appearing in a voluminous record * * * we are of opinion and find that respondents have failed to justify the proposed cancellation."
>
> "Our order will require that the schedules under suspension be cancelled, and that the existing arrangements with the tunnel company and the lighterage company be continued."

So, in the case at bar, upon the record before the Commission, the shippers located on the line of the Railway were entitled, as a matter of *right* and not of mere *grace*, to the restoration of the old rates, and the Commission should, by a "mandatory" order, have required the trunk line carriers to re-establish them. In not doing so it erred in law, and its order should have been enjoined by the District Court.

The question of the amount of the divisions or allowances to be made out of such rates to the Railway, for its services, was a separate and distinct one affecting the carriers only, not the shippers.

II.

DISCRIMINATION.

THE FINDING AND CONCLUSION OF THE COMMISSION, THAT THE GRANTING BY THE TRUNK LINES OF THE FLAT ST. LOUIS RATES TO ALL SHIPPERS WITHIN THE FREE SWITCHING ZONE, AND THE ABSORPTION BY THEM OF THE SWITCHING CHARGES OF ALL OTHER COMMON CARRIERS THEREIN WHILE CONTEMPORANEOUSLY REFUSING TO APPLY

SAID RATES TO SHIPPERS ON THE RAILWAY, AND REFUSING TO ABSORB ITS SWITCHING CHARGES, WAS NOT DISCRIMINATORY, IS CONTRARY TO THE INDISPUTABLE CHARACTER OF THE EVIDENCE, AND IS CONTRARY TO THE LAW APPLICABLE TO THE VERY FACTS FOUND BY THE COMMISSION. (SPECIFICATIONS OF ERROR NOS. 6-13.)

(1) *The Nature and Effect of the Commission's Order.*

Since the order of the Commission was based upon the above finding and conclusion (which we contend was erroneous in law), we respectfully invite attention to the terms, nature and effect of the order, to the end that the *effect* of the said ruling of the Commission may be noted, before we show that it was erroneous in law.

The body of the order reads (italics ours):

> "It is ordered, that the above named defendants and the Manufacturers' Railway Company, according as their various lines or routes may run, be, and *they are hereby*, notified and *required*, on or before January 1, 1915, *to cease* and *desist* from *charging*, demanding, collecting, or receiving *their present rates* on traffic moving in through transportation between points on the line of said Manufacturers' Railway Company and points on the lines of defendants in states other than Missouri, *to the extent that said rates exceed defendants' rates contemporaneously in effect* between St. Louis, Mo., and the same points in states other than Missouri, *by more than* $2.50 *per car.*
>
> It is further ordered, that the above named defendants and the Manufacturers' Railway Company, according as their various lines or routes

> may run, be, and *they are hereby,* notified and *required to establish* and put in force, on or before January 1, 1915, and to maintain in force thereafter for a period of not less than two years, *and apply to said traffic, rates which shall not exceed defendants' rates contemporaneously in effect* between St. Louis, Mo., and points in states other than Missouri, *by more than* $2.50 *per car.*"

The rates of the defendants (trunk lines) to and from points on the lines of the Railway and "contemporaneously in effect" as the result of their refusal to apply the St. Louis rates by absorbing the charges of the Railway, consisted of the St. Louis rates *plus the local charge of the Railway.*

At the same time the rates of the trunk lines in effect as to *all other points in the same switching zone* (St. Louis), but located on the lines of *other carriers* performing terminal switching were *the St. Louis rates, but no more*—the switching charges of those terminal carriers *being absorbed* by the trunk lines *into the St. Louis rates.* (Rec. I, p. 489, 490, 661, 662.)

Therefore it is clear that the order established *a maximum* rate to and from points on the Railway, *of* $2.50 *per car higher* than the rate to and from *all other points* situated in the *free* switching zone of St. Louis, and required the Railway to join with the trunk lines in the publication thereof.

The order itself therefore *continued in effect the unjust discrimination* of the trunk lines *against the Railway and against shippers on its line,* and it *required* the Railway *to concur in such discrimination.*

It is invalid for those reasons. This contention presents the question whether the Commission erred

as a matter of law in concluding that there was no unjust discrimination.

It is also clear that the order did not *require* the trunk lines to extend their St. Louis rates (without any additional charge) to and from points on the Railway, but left it *optional* with them to do so.

The Commission having reached the conclusion (which we shall show was also erroneous in law), that it *could not compel* the trunk lines to apply their St. Louis rates to such points, authorized them *if they saw fit,* to *voluntarily* do so. In other words, the further effect of the order was and is, that the payment by the trunk lines of any portion of the flat St. Louis rates, to the Railway, for its service, as well as the extension of said rates to shipper and industries located on its lines, were thus made matters of *grace* and not of *right.*

Appellants respectfully contend, that upon the latter point also, the conclusion and order of the Commission, were erroneous in law, and contrary to the provisions of the Act to Regulate Commerce, especially of Sections 1, 3, and 15 thereof. The latter contention presents the question of law, whether the Commission *had the power under the Act.*

In subdivision I of this argument, we have shown that there was no proof to sustain the "advanced" rates to points on the Railway, made effective by the cancellation of the absorption tariffs of the trunk lines, and that therefore, the presumption arose that such advanced rates were *per se unreasonable* and in violation of Section 1 of said act. We shall, therefore in this subdivision of our argument, confine

our discussion to a consideration of Sections 3 and 15 of the Act, and their application to the case at bar.

We do not attempt to present to this Court for its consideration, the "expediency" or "wisdom" of the order of the Commission, nor whether, on like testimony, this Court would have made a similar ruling, beause we are aware that the findings of the Commission on issues of fact, when supported by substantial evidence, are accepted as final.

Nevertheless, since we attack the legal sufficiency and correctness of the above conclusion (on the question of discrimination), which the Commission reached upon the facts before it, there is here drawn into question the extent to which the Courts may pass upon or review the correctness of such a conclusion of the Commission.

(2) *Judicial Reviews of the Commission's Findings.* That question in various forms, has already been considered by this Court in a number of cases. Without burdening this brief with an extensive review of those decisions, we shall for the sake of brevity cite the cases which seem to have established the law, and shall then attempt to state what we understand to be the rule thus established and applicable to the case at bar.

I. C. C. vs. Union Pac. R. R. 222 U. S. 541 at 554.
I. C. C. vs. L. & N. R. R. 227 U. S. 88 at 90, 91; and cases cited on page 91.
Proctor & Gamble Co. vs. U. S. 225 U. S. 282.
I. C. C. vs. B. & O. R. R. 225 U. S. 326 at 339.
U. S. vs. Louisiana & Pac. Ry. Co. (Tap Line Case) 234 U. S. 1, 22.

U. S. vs. L. & N. R. R. 235 U. S. 314.
I. C. C. vs. Del. L. & W. R. R., 220 U. S. 235.
Penn. Co. vs. U. S., 236 U. S. 351.
L. & N. R. R. vs. U. S., 238 U. S. 1.

We do not understand that by the above decisions, this Court has established in respect of the judicial review of "administrative orders of the Commission, quasi-judicial in character," any modification of the general rule which obtains in respect of strictly judicial proceedings, that when the ultimate facts are *admitted* or *not in dispute,* the *legal effect* of those facts presents *a question of law,* and is *reviewable as such.*

On the contrary, an analysis of the essential nature of the Commission's conclusions in those of the above cases which this Court declined to review, shows that the above rule has been strictly adhered to, and that in each such instance the Commission's conclusion sought to be reviewed, was *an inference of fact, i. e.,* a conclusion of *ultimate facts* from *evidential facts,* and in no instance was *a conclusion of law.*

We also understand that the rule announced in *I. C. C. vs. Union Pacific,* 222 *U. S.* 541, *at* 554, is still the law (subject to certain explanations required by later cases), viz. (p. 554), (italics ours):

> "In cases thus far decided, it has been settled that the orders of the Commission *are final unless* (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon *a mistake of law.* But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) *the*

rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates *contrary to evidence,* or *without evidence to support it;* or (6) if the authority therein involved *has been exercised in such an unreasonable* manner as to cause it to be within the elementary rule *that the substance, and not the shadow,* determines the validity of the exercise of the power * * * but the courts will not examine the facts further than to determine *whether there was substantial evidence to sustain the order.*"

In the later case of *I. C. C. vs. L. & N. R. R.* 227 *U. S.* 88, it was said (p. 91) that orders of the Commission "are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was *contrary to the indisputable* character of the evidence; * * * or *if the facts found* do not *as a matter of law, support the order* made."

And this Court held that "if there was no evidence" to support the Commission's conclusions, "there was *no jurisdiction* to make the order," and said (p. 92):

> "In a case like the present the courts will not review the *Commission's conclusions of fact* (Int. Com. Comm. vs. Delaware, etc., Ry., 220 U. S. 235, 251) by passing *upon the credibility of witnesses* or *conflicts in the testimony,* but *the legal effect of evidence is a question of law.* A finding *without evidence is beyond the power of the Commission.* An order *based thereon* is *contrary* to law and must in the language of the statute, 'be set aside by a court of competent jurisdiction.' (36 Stat. 551.)"

In the later cases of *U. S. vs. Louisiana & Pacific Ry.*

(*Tap Line cases*) 234 *U. S.* 1 *at* 22, and *L. & N. R. R. vs. U. S.* 238 *U. S.* 1 *at* 10 *and* 11, and in *Penn Co. vs. U. S.* (*the Newcastle switching case*) 236 *U. S.* 351, this Court reviewed the legal conclusions of the Commission *upon the facts found by the Commission.*

(3) *A Judicial Review should be made in the Instant Case.*

In the case at bar we respectfuly contend that the Commission's conclusion that there was no discrimination against the Railway and its shippers, was erroneous in law, because: (a) that conclusion was contrary to the law applicable *to the very facts found by the Commission;* (b) it was *without any substantial evidence* to support it; (c) it was based upon an erroneous view that the Commission *had no power* under the Act *to compel* the trunk lines to apply their St. Louis rates to shipping points on the Railway although they continued to apply such rates to all other and competing shipping points in the same zone; (d) it was based upon *an erroneous interpretation of the decision of this Court* in U. S. vs. Terminal Railroad Association, in that the Commission held that the lines of the Terminal in St. Louis were mere extensions of the tracks of the trunk lines, and that therefore the Terminal should not be treated as a terminal carrier performing a distinctive terminal service, operating independently of the trunk lines, and in competition with the Railway; and (e) it was based upon *an erroneous legal concept* that *because "reciprocal switching" relations* existed between the trunk lines (proprietors of the Terminal), that fact made it improper to treat the service of the Terminal, or the terminal switching services performed by the six trunk lines, as terminal

switching services distinct from the line haul performed by other carriers.

(4) *The facts found by the Commission, and its conclusions thereon.*

What were the facts found by the Commission upon the question of discrimination; what point did it treat as controlling upon that question; and did that point involve a mere conclusion of law, or an inference of fact?

We shall state those facts by quoting from the reports of the Commission, to an extent sufficient to disclose the facts in outline, and lest it be contended that the facts found in the First Report were modified by those found in the Second and Third Reports, we shall quote solely from the Second or Third.

The finding in the First Report (21 I. C. C. 313), that the Railway "is in fact a common carrier at common law, notwithstanding any modification thereof, and therefore within the provisions of the first section of the Act to Regulate Commerce," was not modified or limited in its effect by either the Second or Third Report, but was expressly confirmed by the Second (p. 105), therefore we shall endeavor to limit our quotation of facts to those only which bear on the question of discrimination, and shall include such conclusions as will disclose what points *controlled the Commission* in reaching its conclusions (italics ours):

> Second Report (28 I. C. C., p. 94): "This carrier connects with the trunk lines in South St. Louis and transports carload freight between their termini and points on its line in that city. * * * *Prior to March* 1, 1910, the trunk lines *made an allowance* to the Manufacturers' Railway of from

$3.50 to $5.50 per car *out of their rates to St. Louis on all traffic received from or destined to points on the rails of that carrier. The cancellation of these allowances on that date* gave rise to the complaint, which was filed by the Manufacturers' Railway and certain of its shippers including the Anheuser-Busch Brewing Association, that *shippers located on the Manufacturers' Railway* were *by that action* caused to be subjected to *undue prejudice* and disadvantage *because required to pay its local switching charge of* $2.00 *per car in addition to the St. Louis rate.*"

(P. 98): "The St. Louis Transfer Railway connects with the Wiggins Ferry Company a short distance north of this point of interchange" (referring to the Railway's point of interchange with the Transfer Company), "and the Wiggins Ferry Company delivers to the East St. Louis Connecting Railway on the other side of the river. The other two terminal carriers last named are owned or controlled by the Wiggins Ferry Company and the latter in turn is owned or controlled by certain of the trunk lines entering St. Louis. *Practically all of the terminal and belt railways on each side of the river and the bridges or ferries connecting them are owned or controlled by the fourteen trunk lines entering St. Louis, through the medium of the Terminal Railroad Association of St. Louis, the stock of which they own in equal shares.* Other lines not included within the fourteen which use these facilities on the same basis as do the proprietary lines under some mutual arrangement as to compensation are spoken of in the record as tenant lines. Therefore, although the Wiggins Ferry Company is not owned or controlled by the Terminal Railroad Association of St. Louis as a separate corporation, *it is owned or controlled by certain of the proprietary or tenant lines embraced within that association* and is in practical effect a *part of its ter-*

minal facilities. The only individual *trunk line* which owns its separate terminals on *each side of the river* and the necessary connecting car ferry between them is the Iron Mountain, and these facilities of that carrier are in addition to its one-fourteenth interest in the Terminal Association, of which it is one of the proprietary lines. It will thus be seen that *on traffic to and from the east the trunk lines entering St. Louis are dependent upon the facilities afforded either by the Terminal Association or by its proprietary or tenant lines,* and that the railway *is dependent upon one or the other of those facilities as an inlet and outlet to all of its traffic.*"

(P. 99): "*From* 1888 *to* 1908, during which time before the construction of its viaduct, referred to, its only points of interchange were with the Iron Mountain, the railway *was operated by the Iron Mountain* under a lease of its tracks under which *it received from the Iron Mountain or other trunk lines* from $3.50 to $5.50 per car on all of its shipments received from or delivered to them, including the shipments of the brewery as well as of the independent shippers on its rails. Upon the expiration of the second of these ten-year leases in the latter year, the railway refused to renew the lease agreement, and shortly thereafter proceeded to operate the property itself, the reason assigned by it for this action being the allegedly poor service of the Iron Mountain. It appears, however, that there was a second and important, if not the controlling, consideration which entered into that decision, and that was the plan conceived by the younger Mr. Busch, one of its principal stockholders, to extend the line of the railway in St. Louis, to construct a new terminal line seven miles in length *in East St. Louis and to connect the two* by means of an additional bridge which was then in the contemplation of the municipal authorities. The trunk lines *continued to make these absorp-*

tions to the railway until in the latter part of the year 1909, when, *following the announcement* through the press of St. Louis *of the definite plan with respect to the extension of the railway system,* they *gave notice of their intention to cancel all allowances,* not only to the Railway, but to the 12 industrial lines referred to, and all these allowances were accordingly *cancelled effective* March 1, 1910, as explained."

(p. 103): "The allegation of undue discrimination is based primarily upon *the practice of the trunk lines of absorbing the charge of $3 per car asssessed by the Terminal Railroad Association against them for passing over its terminals* and of *their absorbing each others switching charges* under the reciprocal arrangements existing between them as members of that Association. It was to enable them to enter St. Louis and to furnish these reciprocal advantages and to afford a uniform rate to all shippers upon their lines in St. Louis that the trunk lines formed the Terminal Association, and *the relative advantages afforded by these facilities,* and the *relative necessity to the trunk lines of acquiring them should,* we think, *be given due consideration in the determination of whether the trunk lines unduly discriminate against shippers on the Railway in refusing to absorb its charge while contemporaneously absorbing the charge of the former.* Delivery of freight is made *at the St. Louis rate* on the rails of the *St. Louis Transfer Railway,* which as stated *is owned by certain of the proprietary lines of the Terminal Association* through the Wiggins Ferry Company, *and on the rails of the Iron Mountain,* one of the proprietary lines of the Terminal Association, within two or three blocks of the whole length of the Second street line of the railway, and in addition the rails of the Iron Mountain extend west to and across the northern end of the Second street line of the railway and in a

few instances serve even the same industries by direct spur tracks. *In addition to these deliveries* in this section of St. Louis *on what are in fact their own rails, with attendant reciprocal advantages to them,* the trunk lines are sought to be required by this Commission's order to go a step further and bear the expense of the delivery on the rails of *a separate and independent terminal connection* which is *not in position to render such reciprocal services* and which, by its own statement, is endeavoring to construct an extensive terminal system *to rival the trunk lines' own facilities* as represented in *the Terminal Association.*"

(p. 105): "In this connection it *may be argued* by complainant that the Terminal Association is *a separate corporation* from *the trunk lines. This is true.* But it is also true that intermingled with the lines controlled by it as a separate corporation are included *in the same reciprocal arrangement certain terminal lines owned or controlled by its proprietary or tenant lines direct,* as is the Wiggins Ferry Company, *as well as the various terminal properties of the individual trunk lines themselves, all of which together constitute the united terminals of all the trunk lines entering the city.* There *is therefore here presented a different situation* from that which *would be presented* if we had under consideration *two or more independent terminal systems* in St. Louis, and the *trunk lines, absorbing the charge of one or some of them and refusing contemporaneously to absorb the charge of the others under like conditions.*"

"We have carefully considered the evidence as presented by the combined record, and, considering all the facts, circumstances, and conditions as now appearing, *it is our conclusion, and we so find,* that the railway *is a common carrier* subject to the act, *as held in the previous report;* that the payments formerly made out of their through rates by the trunk lines to the railway *were absorptions in compensation for services rendered*

to the trunk lines and were *in no sense divisions of joint rates* as for services *rendered for the shippers* served by the railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions, the Commission could make no lawful order with reference thereto; that *the defendant trunk lines in delivering freight at the St. Louis rate* to points *on the rails of the Terminal Railroad Association of St. Louis* and *in refusing to bear the expense of similar delivery by the railway upon the rails of that carrier* are *not subjecting the shippers located on and served by the Railway to undue prejudice and disadvantage;* that therefore the only lawful order the Commission can make is in the establishment of joint rates if the conditions are such as to warrant that action; that *under joint rates* so *prescribed* that part of the service performed by the Railway would be in the contemplation of the act *a service performed for the shipper* to be paid for *by the shipper* and *could not be construed* by the Commission *to be a service rendered for the trunk lines,* the expense of which could be required by the Commission's order *to be borne by the trunk lines;* that the rates of the trunk lines *not being shown to be unreasonable in themselves,* such joint rates with the railway must therefore necessarily be *in excess* of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis."

(p. 109): "It is *unnecessary in this proceeding to discuss in detail the Terminal Railroad Association* of St. Louis, or *otherwise than to state it,* to *indulge in comment upon complainants' contention* that the trunk lines of St. Louis, instead of the owners of the railway, and its shippers for whom its services are rendered, *should be com-*

pelled to develop this carrier into a formidable independent terminal system to rival their own." (p. 110): "It is equally unnecessary and inappropriate to discuss the question whether the Terminal Railroad Association of St. Louis is a monopoly in violation of the Sherman Anti-Trust Law, as the determination of that question *is quite apart from this proceeding and is not controlling of the issues before this Commission.*"

From the findings of fact above quoted, it will be observed that *the Commission found the essential facts upon which is based appellants' contention that there was undue discrimination*, viz.: that the Railway is located within the switching zone (St. Louis), to shipping points in which, located on the tracks of the Terminal or of trunk lines, the latter applied their St. Louis rates, without any additional charge for the terminal switching; that for more than twenty years they had also applied such rates to points on the Railway, by absorbing into their St. Louis rates the separate charge for terminal service over the Railway; that effective March 1, 1910, they had *canceled* such absorptions *as to points on the Railway, while contemporaneously continuing* their practice of *making* such *absorptions as to all shipping points in St. Louis*, located on the tracks of *all other carriers* which performed similar terminal services; and that the result or effect of such cancellations by the carriers, was, as to the Railway, that instead of receiving for its service, divisions averaging about $4.50 per car, it thereafter received (as shown elsewhere in the reports), a local switching rate imposed by city ordinance of only $2.00 per car,—and as to the shippers, that they suffered an increase in rates by having to pay the St. Louis rates plus the additional charge of the Rail-

way,—*whereas their competitors located on the lines of other terminal carriers in the same switching zone, were then receiving the benefit of the St. Louis rates without any additional switching charge.*

An examination of the evidence before the Commission will show that the facts thus found by the Commission were not disputed, *i. e.*, there was *no substantial evidence contra*, and no issue of fact in respect of the existence of any of said facts.

Therefore the ultimate facts last above outlined by us, stand for the purpose of consideration by this Court, as ultimate facts found by the Commission; and since those facts, as a *matter of law*, show conclusively *that there was undue discrimination*, the Commission's conclusion *contra*, was erroneous in law not only because *contrary to the law applicable to the facts found*, but also because *unsupported by any substantial evidence.*

From the above quoted conclusions of the Commission based upon those facts, and concerning the question of discrimination, we respectfully submit that it *is clear that the Commission based its conclusion that there was no undue discrimination, entirely upon its further conclusion (which was purely a conclusion of law, not involving any inference of fact), that the terminal service performed by the lines of the Terminal and of its operating subsidiaries and of the terminal facilities of the Iron Mountain*, and of the five other trunk lines, which perform terminal switching in St. Louis in connection with other line carriers, *must as a matter of law be treated as part of the line haul of the trunk lines, and not as distinct terminal services performed by independent terminal carriers competing*

with the Railway; and this notwithstanding the fact that *while refusing to continue to absorb the terminal charges of the Railway,* the trunk lines were *at the same time continuing to absorb the terminal charges of the Terminal and of the Transfer Railway, and of the various trunk lines which performed terminal services in St. Louis.*

By that *interpretation of the law,* the Commission permitted the trunk lines *to deny the St. Louis rate* to shippers on the Railway, while at the same time permitting it to *all shipping competitors within the same switching zone* (the City of St. Louis), and thus placed the Railway and its shippers at the disadvantage of having *higher rates than any other shipping points in St. Louis,* and put them at the mercy of the trunk lines owning the Terminal, by holding that while the trunk lines might *by voluntary act* as a matter *of grace,* absorb (or refuse to absorb) the charges of the Railway, the Commission *could not compel them to do so.*

We respectfully submit that the Commission erred as a matter of law in each of the following concepts upon which it thus predicated its ultimate conclusion of *no discrimination*:

The Commission erroneously interpreted the decision of this Court in U. S. vs. Terminal Railroad Association, *supra,* by holding, contrary to the plain effect of that decision, that the *terminal switching services* performed by the Terminal, and by its subsidiaries, and by those trunk lines which perform terminal switching in St. Louis, in connection with other carriers having the line haul, must *not* be treated *as terminal services distinctive from the line haul, i. e.,* services to be rendered and charged for *in competition*

with other terminal carriers (performing like terminal services in the same switching zone), *not owned by nor owning the Terminal,* but *must* be treated as a *part* of *the line haul,* thus *shielding* the Terminal and its subsidiary and proprietary lines, *from the restraints and duties resulting from the status of competition,* and thus *"guaranteeing"* them *"against any competitive system"* (U. S. vs. Term. R. R. Assn., 224 U. S. 383, at 400).

The Commission erred further in concluding that the existence of "reciprocal switching" relations between the trunk lines *required* it to hold that the terminal services of the other carriers performing terminal switching should be thus treated *as a part of the line haul* and not *as terminal services rendered in competition with the Railway.*

The Commission erred further in concluding that there was any legal distinction between *"divisions* of joint rates," and *"absorptions* of switching charges," upon which to found its conclusion that while it had *power* under the Act to *prescribe* such *"divisions,"* it *lacked power* to *prescribe* such *"absorptions."* The distinction attempted to be made by the Commission on that point, was arbitrary, without substance, and erroneous in law.

Of the above contentions, in above sequence:

(5) *In Deciding that there was no Discrimination the Commission Interpreted the Decision of this Court in the Terminal Case contrary to the plain Effect of that Decision, by holding that the terminal switching services performed by the Terminal, and by its subsidiary lines, and by those trunk lines which perform*

terminal switching in St. Louis in connection with other carriers having the line haul, must, as a matter of law, be treated as a part of the line haul, and not as terminal services distinctive from the line haul and rendered in competition with the Railway.

(a) *The Commission expressly based its Conclusion of no Discrimination on its legal view that the Terminal must not be treated as performing a Terminal service distinctive from the line haul performed by its proprietary lines.*

This appears clearly from the following language of the Commission's Second Report (28 I. C. C. 105), italics ours:

> "In this connection it may be argued by complainant that the terminal association is a separate corporation from the trunk lines. This is true. But it is also true that intermingled with the lines controlled by it as a separate corporation are included in the same reciprocal arrangement certain terminal lines owned or controlled by its proprietary or tenant lines direct, as in the Wiggins' Ferry Company as well as the various terminal properties of the individual trunk lines themselves, *all of which together constitute the united terminals of all the trunk lines entering the city.* There is, therefore, here presented *a different situation from that which would be presented if we had under consideration two or more independent terminal systems in St. Louis,* and the trunk lines *absorbing the charge of one* or some of them and *refusing contemporaneously to absorb the charge of the others* under like conditions. * * *"

It thus appears that the Commission decided the case at bar on the theory that the only independent

terminal system within the city of St. Louis was the Railway, and that the Terminal Railroad Association of St. Louis was *not* an independent terminal system within said city, performing terminal switching distinct from the line haul, and that if the Terminal Railroad Association had been an independent terminal system in said city, and if the service rendered by it had been a terminal service distinct from the line haul, then a different situation from that considered by the Commission, would have been presented to it.

Accordingly, if the Terminal was and is *an independent terminal system* in St. Louis (the Railway concededly being recognized as such), then the Commission, in reaching its conclusion that the act of the trunk lines in absorbing the charges of the Terminal and of its subsidiaries and of the trunk lines having terminals—while refusing contemporaneously to absorb the charges of the Railway—was not discriminatory, *did not base* said conclusion upon *the correct legal concept* of the status of the Terminal as shown by the very facts which the Commission had found and which are undisputed on the record. In other words, if the decision of this Court in the Terminal case required the conclusion that the only legally permissible status of the Terminal is that of "an independent terminal system" (performing a terminal service, distinct from the line haul, and thus "independent" of the proprietary trunk lines which perform the line haul), then the fundamental basis on which the Commission founded its conclusion of no discrimination, *was erroneous.*

Is the Terminal Railroad Association of St. Louis an independent terminal system?

That question has already been finally decided by

this Court in U. S. vs. Terminal R. R. Assn., 224 U. S. 383.

The only fact present in the case at bar, affecting the status of the Terminal which was not in the record in the Terminal case, is the existence of the Railway as a separate and independently operating terminal system competing with the Terminal (and its subsidiary and proprietary lines), in the St. Louis switching zone.

At the time of which the record in the Terminal case spoke the lines of the Railway were leased to and operated by the Iron Mountain, and were thus a part of the lines operated by one of the proprietors of the Terminal system, which then had *no competitor terminal system in St. Louis, i. e.*, no competing system independent of the Terminal or its subsidiary or proprietary lines.

When said lease ended, and the Railway established itself and began to operate as an independent terminal system, it became and has since been, the only competitor of the Terminal (its subsidiary and proprietary lines), in the St. Louis switching zone.

In the Terminal case (224 U. S. at 401), this Court said; (italics ours):

> "We are not unmindful of *the essential difference* between *terminal systems* properly so described and *railroad* transportation companies. The first are but instrumentalities which assist the latter in *the transfer of traffic between different lines*, and in the collection and distribution of traffic."
>
> Again, on page 407: "If the combination which has occurred is to escape condemnation as a combination of parallel and competing railroad companies, *it is because of the essential difference be-*

> tween *railroad* and *terminal* companies proper—differences pointed out by the Missouri Supreme Court in the case heretofore referred to. Indeed, the defense to this proceeding *is based upon the insistence* that *the Terminal* Company is *solely engaged in operating terminal facilities,* defined in the briefs 'as mechanical devices for the exchange receipt and distribution of the traffic.' "

We understand that in the Terminal case, this Court held:

First: That the Terminal combination as it existed gave the *proprietary trunk lines a control over the traffic* in and out of and through St. Louis, which was *susceptible of great abuse* and which the Court found, in fact, had been abused, and therefore, as to that feature of the organization which made the Terminal Association *a dependent creature of its proprietary companies* (and which would require its service to be treated as *a part of the line haul*), and *not an independent institution* (performing a distinct terminal service), the Association was *condemned as a monopoly.*

The above quotation (from page 407) seems to require that conclusion.

Second: That the reciprocal *dependency* of the trunk lines upon the Terminal (compelled by that clause in the Terminal agreement which gave the Terminal a monopoly of their cross-river traffic), was monopolistic and invalid, because the compact in question (opinion p. 400):

> "Would seem to guarantee *against any competitive system,* since the companies to the agreement now control about one-third of the railroad mileage in the United States."

We understand that this Court thereby held that the field *must be kept open to a competitive system;* and yet no system then or now could put itself into such a relation with the line carriers as the Terminal Association occupies if that Association is to be considered, in respect of the service rendered by it, not as an independent terminal institution but as a part of the trunk lines' own rails.

We respectfully contend that it is therefore a necessary conclusion from the decision of this Court in the Terminal case, that *if the Terminal be held an integral part of the trunk lines* and its service *a part of their line haul,* then *the combination is unlawful* and *would be dissolved;* if, on the other hand, it is *an independent institution,* "solely engaged in operating terminal facilities," performing a distinct terminal service (not a part of the line haul), then it is lawful, but in the latter case, it must be treated *as an independently operating* terminal carrier, *for all purposes* of competition.

The trunk lines (before this Court) justified the Terminal's continued existence on the ground that *it is an independent terminal carrier,* but on the other hand, in their treatment of the Railway, they discriminated in favor of the Terminal and in favor of its shippers and in favor of each other and against this competitor, on the ground that the Terminal is legally *an integral part of the trunk lines,* and its service a part of the line haul, and they thereby contravened the decision of this Court in the Terminal case.

Yet that is precisely what the Commission held they might do, since its decision of "no discrimination," was based squarely upon its holding that the Terminal was *not an independent terminal system.*

The trunk lines (before this Court) justified the continued existence of the Terminal on the ground that since *the character of its service* should be treated as *distinct from the line haul,* and since the Terminal as an institution should therefore be treated as a terminal carrier "*independent*" of its proprietary trunk lines—therefore the field (the St. Louis terminal switching zone) *would be open* to "any competitive system" which might be established and which might seek to compete with the Terminal, in terminal switching.

And yet, when the Railway did seek to become, and to operate as, such a "competitive system," and was the only carrier which even "threatens to become a rival" of the Terminal, the latter and its proprietary trunk lines attempted to strangle it by cancelling rate divisions and allowances upon the continued existence of which the Railway is dependent for its life.

They attempted to (and unless prevented by this Court in this case they will), accomplish *by cancellation* of tariffs, what this Court held in the Terminal case they could not do *by contract.*

Yet that is precisely what the Commission held they might do, since its decision of "no discrimination" was based squarely upon its holding that the Terminal is *not* "an independent terminal system in St. Louis."

We respectfully submit that if the Commission's holding is correct, and if the trunk lines have it within their optional power to refuse or to grant divisions or allowances to the Railway, or to any other terminal carrier which may hereafter seek to rival the Terminal, then no such competition will ever be possible, every "threatened rival" will be strangled before it is born,

and the field which this Court has decided must be kept open to competition, may forever be kept closed by the Terminal and by its proprietary trunk lines.

Except for the Commission's erroneous legal concept concerning the Terminal, the Commission, instead of holding that it *had not*—would have held that it "*had* under consideration *two or more independent terminal systems* in St. Louis, and the trunk lines absorbing the charge of one or some of them and refusing contemporaneously to absorb the charge of the others under like conditions" (28 I. C. C., at 105); and thereupon the conclusion that undue discrimination *had* resulted, *would have been inevitable.* Yet the conclusion which the Commission did reach, that the service of the Terminal must be treated as an integral part of the line haul, was its deliberate legal conclusion after consideration of the decision of this Court in the Terminal case, to which the attention of the Commission had been emphatically directed.

The Trunk lines met in 1889, and made a solemn written agreement designed to shut out competitors, and this Court held it unlawful. They met again in 1909, and agreed to and did cancel tariffs, intending thereby to perpetuate the very same unlawful monopoly, and to shut out *this competitor,* and the Commission held it lawful.

The latter act is as unlawful as the former, and yet the Commission, through the error above shown, has sanctioned it as valid, and has thus nullified the effect of the decision of this Court in the Terminal case.

(b) *Nor can the conclusion of the Commission on the status of the Terminal be sustained on the ground that the trunk lines own all of its shares of stock.*

That point had long been settled by this Court in *I. C. C. vs. Stickney*, 215 *U. S.* 98, *at* 108, which should be read in connection with *U. S. vs. Union Stock Yds. Co.*, 226 *U. S.* 286.

In the Stickney case, the Union Stock Yards Company owned railroad tracks connecting its yards with various trunk lines entering Chicago. The trunk lines made a separate charge of $2.00 per car for transporting freight beyond their own lines over said tracks of the Union Stock Yards Company for delivery at such yards. The Commission required the lines to reduce that charge to $1.00 per car, and they sued to enjoin the order.

In considering whether the additional charge was reasonable and permissible, the question arose *whether the terminal lines* of the Stock Yards Company *should be treated as a part of the lines of the separate railroad companies which owned or controlled its stock, because of such ownership.*

In its essence that was precisely the question which confronted the Commission as to the Terminal Association and its proprietary and subsidiary lines.

This Court disposed of the point by saying (215 U. S. 98, 108):

> "The Union Stock Yards Company is *an independent corporation*, and the fact, if it be a fact, that most or even *all of its stock is owned by the several railroad companies* entering into Chicago, *does not make its lines or property any part* of the lines or property *of the separate railroad companies.*"

In the case of *U. S. vs. Union Stock Yards & Transit*

Co., and Chicago Junction Ry. Co. vs. U. S. (226 U. S. 286) the Stock Yards Company had leased its railroad lines to the Junction Company, which then operated them. The trunk lines absorbed the charge of the Junction Company for terminal switching to the Stock Yards. The Government, at the request of the Commission, sued to compel the Junction Company and the Stock Yards to comply with the Act, as common carriers. The Commerce Court held, *upon facts practically undisputed*, that they were not common carriers. This Court held that they were common carriers subject to the Act because the service performed was a part of the carriage of freight by railroad in interstate commerce, and that *it made no difference that the performance of the service was distributed among different corporations having common ownership.*

Even without the decision in the Terminal case, therefore, the foregoing cases show that the Commission erred in law and exceeded its authority in holding that the facilities operated by the Terminal, and that those of its subsidiary and proprietary lines *must be treated as a part of the property of all the proprietary trunk lines,* so that service over those tracks would become a part of the line haul.

Having thus shown that the Commission's conclusion of *no discrimination* was based upon an error in law, we respectfully submit that its finding was arbitrary and unwarranted, contrary to the law upon the facts found, and without evidence to support it; and that the order based upon it should be enjoined.

(c) *The Commission erred further in concluding; that the facilities of each of the six proprietary trunk lines which perform terminal switching in St. Louis,*

should be treated as extensions into St. Louis of the rails of all the other trunk lines, and that the terminal switching in St. Louis performed by each trunk line, in connection with the line haul performed by another trunk line, should be treated as a part of the latter's line haul.

We respectfully submit that from the decisions in *the Terminal and Stickney cases (supra), it necessarily follows that the Terminal facilities of each trunk line within the City of St. Louis form an independent terminal system so far as concerns the terminal switching service performed with such facilities in respect of traffic on which some other trunk line performed the line haul.*

Each trunk line which has its own rails within the city, thus has its own individual terminal facilities and industrial tracks. Such facilities are operated by the owning trunk lines and are wholly separate and independent terminal facilities from those of the Terminal, and from those of the Railway.

Thus the following six trunk line carriers have their own separate terminals and rails in St. Louis, to-wit: St. Louis & Iron Mountain and Southern Railway Company; Missouri Pacific Railway Company; St. Louis & San Francisco Railroad; Wabash Railway Company; Chicago, Rock Island & Pacific Railway Company; and the Chicago, Burlington & Quincy Railway Company (Rec. I, p. 661.) The terminal facilities of each of these companies are quite extensive; all of them are within the free switching district; and they serve many *shippers' stations, team tracks, public delivery yards, industrial tracks and industries.* Each of these trunk

lines performs a strictly *terminal service* (in connection with other carriers which perform the line haul), on traffic upon which *they do not perform the line haul.* This terminal service is in every respect identical in character with the service performed by the Railway, and with that performed by the Terminal.

As stated by the Commission; (21 I. C. C. 308, italics ours):

> "In St. Louis there are three industrial centers which naturally require *terminal facilities.* The northern section of the city along the river is one of these centers and is served by a considerable mileage of the Terminal Association and the *rails of nine of the trunk lines* entering St. Louis. In the western section of the city, in what is known as the Mill Creek Valley, there are many industries served by a considerable mileage of the Terminal Association and the *rails of four of the trunk lines* entering the city. In South St. Louis the companies rendering *terminal services* are the Manufacturers *and the Iron Mountain.*"

To illustrate (from undisputed record evidence) the practice of the trunk lines in respect of the terminal facilities of the six trunk lines: that portion of the tracks of the Wabash used in terminal service is known as the "Wabash Union Depot Line"; its tracks connect with the tracks of the Terminal Railroad Association between Twenty-Second and Twenty-Third streets. Should a car of freight originate at some point east of the Mississippi River and be consigned to an industry located on said Wabash terminals, the shipment would be delivered by the trunk line to the Terminal Association, and would be brought by it across the river and delivered to the Wabash at its

said connection between Twenty-Second and Twenty-Third streets, and the Wabash would then switch it to the particular industry on its terminals. Should such a car be consigned to a shipper or industry on said terminal between Twenty-Second street and Vandeventer avenue, the charge of the Wabash, if it were competitive traffic, would be one cent per 100 pounds, minimum $5.00 per car, while on non-competitive traffic the charge would be three-fourths of a cent per 100 pounds, minimum 40,000 pounds; and such switching charge *would be absorbed into the St. Louis rate by the trunk lines having the line haul.* (Record I, p. 659, 661, 662, 715.)

Again: the Missouri Pacific has many industries located on its very extensive terminal facilities within said free zone, and on all traffic on which it does *not perform the line haul,* it makes a charge for its terminal switching services, ranging from $6.00 to $3.00 per car, which charge *is absorbed into the St. Louis rates* by the carrier or carriers performing the line haul. (Rec. I, p. 659, 661, 662.)

And again: the Chicago, Burlington & Quincy also has very extensive terminal facilities in North St. Louis, over which it does a very large switching or terminal service for the other trunk lines, the charges for which are absorbed into the St. Louis rate by said trunk lines. So likewise with the Frisco and the Chicago, Rock Island & Pacific.

As illustrative of the discrimination practiced by the trunk line carriers, through and after the cancellation of their said tariffs, and of what (under the decisions and order of the Commission), they *may* continue to do at *their volition,* we refer to the shipments

of bituminous coal to industries in St. Louis, the tonnage of which is enormous. Should a car of coal originate in what is known as the "inner group," say, on the line of the Illinois Central Railroad, consigned to an industry on the Missouri Pacific tracks, the proceeding would be as follows: the Illinois Central would perform the line haul and deliver the coal in East St. Louis to the St. Louis Terminal Railroad Association; that carrier would transport the car across the river and deliver it to the Missouri Pacific at the junction of its tracks with the tracks of that company; the Missouri Pacific would then switch the car to the industry, and thus make final delivery. The rate from the mine to St. Louis, under the tariff of the Illinois Central is 57½ cents per ton; out of this 57½ cents it would pay to the Terminal Association 20 cents for its service in hauling the car from East St. Louis to the Terminal's junction with the Missouri Pacific tracks in St. Louis, and would *also, out of the* 57½ *cents rate, pay to the Missouri Pacific* 10 *cents per ton for its terminal switching services.* Similar payments would be made were such switching performed by the Wabash, Iron Mountain, or any other line in St. Louis, *except the Manufacturers' Railway,* so that coal dealers or users on the lines of the Railway would be required to pay the St. Louis rate, plus the local rate of the Railway.

One of the most striking illustrations of the gross discrimination against the complainant Railway and against its shippers which resulted from the refusal of the trunk lines to absorb its charges for switching, while continuing to absorb similar charges of other common carriers for like service, and which practice under said decision or order may at any time be reestablished, is shown by the following actual example:

the plant of the N. K. Fairbanks Company is situated in South St. Louis within the free switching zone, and is reached by the tracks of both the Iron Mountain and the Railway; the former makes delivery at the north side of the plant and the latter at other sides of the same plant. Assume that two cars are shipped from Pittsburgh consigned to said Fairbanks Company, and are both brought to East St. Louis by the Vandalia, and there delivered to the Terminal Association. Both cars are transported by the Terminal across the river, and one is delivered to the Iron Mountain, the other to the Manufacturers' Railway, to perform the terminal switching and make final delivery. The Iron Mountain switches its cars to the north side of the plant, and the Manufacturers' Railway does a like service to the south side of the same plant, and both cars are thus finally delivered to their destination. The Vandalia will pay to the Iron Mountain, out of the St. Louis rate, the latter's charge for its switching service, but will *refuse* to pay anything to the Manufacturers' Railway for the similar service performed by it, so that the shipment via the Railway is required to pay the St. Louis rate, plus the local rate of the Railway.

Further using the Fairbank's illustration, under the decisions and order, if the trunk line carriers *see fit* to *exercise the right granted them by the Commission*, this anomalous condition would arise, viz.: on the car switched and delivered by the Iron Mountain, the consignee would pay only the St. Louis rate, whereas on the other car, switched by the Manufacturers' Railway, he would be required to pay $2.50 in addition to the St. Louis rate unless, *as a matter of grace*, the Vandalia *chose* to apply the St. Louis rate to said car

and absorb the switching charge of the Manufacturers' Railway.

Both the Railway and its shippers object to being thus left wholly at the mercy or whim of the Vandalia road, or of any of the other trunk lines, in the above respect.

And they respectfully contend, that not only the lines of the Terminal and its subsidiaries, but also the terminal lines of the said six trunk lines, should be treated as performing a distinctively terminal service, and as competitors of the Railway, or else undue discrimination will necessarily result; and that consequently the finding and order of the Commission, which treated them as part of the rails of *all* the trunk lines, was erroneous in law and should be enjoined.

Moreover the order permitting such a discriminatory practice to be established is unlawful, because the same is discriminatory not only against the Railway as a connecting carrier, but also against shippers located thereon:

The record before the Commission shows (by undisputed evidence) that the Railway, in addition to serving the Anheuser-Busch Brewing Association, also serves six other breweries, viz.: American Brewing Company; Columbia Brewing Company; Green Tree Brewing Company; National Brewing Company; Louis Obert Brewing Company, and Union Brewing Company (Rec. I, Ex. 50, p. 878); all of which breweries compete with the Anheuser-Busch Brewery, and with each other and with all other breweries in St. Louis served by other carriers, which other carriers render to all the breweries which they serve, terminal

service identical in character with the service rendered by the Railway to said six breweries located on its lines, and at the St. Louis rates (Rec. I, p. 588, 592, 604, 605).

Thus: the National brewery is located on the tracks of the Missouri Pacific at Eighteenth street; on all its shipments on which said carrier does not have the road haul, the latter performs a purely terminal service to its connection with the tracks of the trunk line having the road haul, or to its connection with the tracks of the Terminal Association; and such trunk line absorbs into the St. Louis rate said terminal switching charge, or charges, thus giving to said brewery the flat St. Louis rate (Rec. I, p. 662).

Another competitive brewery, viz., the Empire Brewery, is located on a plant spur track connecting with the Wabash near Sarah street in said city, the traffic therefrom being handled in a similar manner as above, and the St. Louis flat rate being applied thereto by absorbing the switching charge of the Wabash (Rec. I, p. 662).

So, in like manner, under the order herein complained of, all the trunk lines may at their volition discriminate against all of the other industries and shippers situated along the lines of the Railway, all of which industries (consisting of coal companies, lumber companies, ice plant, etc.), are in competition with like industries in said city on the terminals of other carriers and within said free switching zone (Rec. I, p. 662).

(d) *The Commission also erred as a matter of law in holding that the existence of "reciprocal switching"*

relations between the trunk lines, made their St. Louis terminals mere extensions of the rails of all the trunk lines, and made the terminal service, performed by them, a part of the line haul.

The Commission's conclusion upon this point was thus expressed in its Second Report (28 I. C. C. 103, italics ours):

> "The allegation of undue discrimination is based primarily upon the practice of the trunk lines of absorbing the charge of $3 per car assessed by the Terminal Railroad Association against them for passing over its terminals and *of their absorbing each other's* switching charges *under the reciprocal arrangements* existing between them as members of that Association."
>
> "It was to enable them to enter St. Louis and *to furnish these reciprocal* advantages and to afford a uniform rate to all shippers upon their lines in St. Louis that the trunk lines formed the Terminal Association, and *the relative advantages* afforded by these facilities and the *relative necessity* to the trunk lines of acquiring them should, we think, *be given due consideration* in the determination of whether the trunk lines *unduly discriminate* against shippers on the Railway in refusing to absorb *its* charge *while contemporaneously* absorbing the charge of the former. Delivery of freight is made at the *St. Louis rate* on the rails of the St. Louis Transfer Railway, which as stated is owned by certain of the proprietary lines of the Terminal Association through the Wiggins Ferry Company, and *on the rails of the Iron Mountain*, one of the proprietary lines of the Terminal Association *within two or three blocks of the whole length of the Second street line of the railway*, and in addition the rails of the Iron Mountain extend west to and across the northern end of the Second street line of the Railway and

in a few instances *serves even the same industries* by direct spur tracks. In addition to these deliveries in this section of St. Louis *on what are in fact their own rails,* with *attendant reciprocal advantages* to them, the trunk lines are sought to be required by this Commission's order to go a step further and bear the expense of the delivery on the rails of *a separate and independent terminal connection* which is *not in position to render such reciprocal services* and which, by its own statement, is endeavoring to construct *an extensive terminal system to rival the trunk lines' own facilities as represented in the Terminal Association.''*

The above attempted distinction because of reciprocal switching relations, was contrary to the decisions of this Court.

Thus, in *Pennsylvania Co. vs. United States,* 236 *U. S.* 351 (the Newcastle switching case), the Pennsylvania Company refused to accept from and move to the Buffalo, Rochester & Pittsburgh Railway Company, carload lots of freight, within the switching limits of Newcastle, although performing such service in connection with other carriers within such switching limits. The Commission in spite of the fact that the Pennsylvania Company urged, as a defense for its refusal, the fact that it had certain ''reciprocal arrangements'' with said other roads regarding the interchange of cars, which it did not have with the Buffalo, Rochester & Pittsburg Railway, held, that *notwithstanding such reciprocal arrangements,* such refusal was a discrimination, and that the same was undue, unreasonable and in violation of the Act to Regulate Commerce. This Court, upon appeal, said: (p. 365.)

''We agree with the Commission and the Court

below that the alleged reciprocal shipping arrangements do not remove the discriminatory character of the treatment of the Rochester Road."

In L. & N. R. R. Co. et al. vs. United States, 238 *U. S.* 1, the Traffic Bureau of Nashville had instituted proceedings before the Interstate Commerce Commission, against the L. & N. and N. C. & St. L. R. R. Cos., seeking, among other things, to require a discontinuance of what was alleged to be a discriminatory switching practice in the yards at Nashville. In describing the questions before the Commission, this Court said, (p. 16, 17):

> "In its complaint before the Commission the Traffic Bureau also attacked the practice of the appellants by which, under filed tariffs, each made a charge of $3 per car for switching *non-competitive business* between industries within the terminal limits and in conjunction with the Tennessee Central."
>
> "The Bureau insisted that this practice was discriminatory and designed to prevent the switching of coal between the Tennessee Central and private industries, located on sidings and reached through the terminals. The defendants admitted the practice and the intention, but insisted that the yards had never been thrown open to such business. They claimed that they had the right to the exclusive use of their own terminals, and *could not be required* to switch cars loaded with 'coal or competitive freight' to and from the Tennessee Central."

The Commission found that the L. & N. and the N. C. & St. L. had leased the yards from the Nashville Terminal Company. It found that each switched for the other and both switched for the Tennessee Central,

except as to "coal and competitive business." It found that such a switching practice was unreasonable and unjustly discriminatory, and that a "reasonable practice would permit the switching of coal from the interchange of each carrier to industries on the rails of each other." It thereupon issued an order requiring appellants to cease the discrimination found to exist and to maintain "a practice which will permit the inter-switching of such shipments from and to the lines of each and every defendant" (including the Tennessee Central).

Concerning the relation of reciprocal switching and discrimination, this Court (on pages 18, 19, italics ours) said:

> "Disregarding the complication arising out of joint ownership and the fact that each of the appellants switches for the other, it will be seen that the Commission is not dealing with an original proposition, but with *a condition brought about by the appellants themselves.* Under the provisions of the commerce act (24 Stat. at L 380, chap. 104, Comp. Stat. 1913, S. 8565) the *reciprocal arrangement between the two appellants would not give them a right to discriminate against any person or 'particular description of traffic.'* "
>
> And on page 20: "The question as to power of the Commission to make this part of the order is settled by the decision in Pennsylvania Co. vs. United States, 236 U. S. 351, 370, recently decided. The appellants, however, insist that that case did not involve *switching* but *transportation;* and further, they claim that the Pennsylvania road was there ordered to *discontinue* discrimination—while here the appellants are required by an affirmative order to *devote their property to the use of a parallel and competing carrier.* But the alleged differences do not serve to take the

present case out of the principle announced in that just cited. For in this order the prohibition against the existing practice and the requirement to furnish equal facilities come to the same thing."

"In this case the controlling feature of the Commission's order is the prohibition against discrimination. It was based upon the fact that the appellants were at the present time *furnishing switching service to each other* on *all* business, and to the Tennessee Central on all *except coal* and *competitive business.* As long as the yard remained open and was used as a facility for switching purposes the Commission had the power to pass an order not only prohibiting discrimination, but requiring the appellants to furnish equal facilities 'to all persons and corporations without undue preference to any particular class of persons'. The question as to what is a proper practice, the amount of charge therefor, and the length of time such switching service is to continue, are matters not presented for decision on this record. The judgment of the District Court is affirmed."

The next order of the Commission in above case required the L. & N. and the N. C. & St. L. to "abstain from maintaining any different practice with respect to switching interstate carload shipments of coal from and to the tracks of the Tenn. Cent. R. R. Co., at Nashville, Tenn., than they contemporaneously maintain with respect to similar shipments of coal from and to their respective tracks." Said order was construed by the carriers to relate exclusively to non-competitive coal and they responded by switching non-competitive coal from the Tenn. Cent. at a charge of $3.00 per car, the same as all other non-competitive traffic, but *without changing their former practice relative to competitive coal.* Whereupon, the City of Nashville and the Traffic Bureau of that City filed a further com-

plaint asking that the L. & N. and N. C. & St. L. be required to interchange with the Tenn. Cent. *all traffic* to and from industries and their respective lines at Nashville at a uniform rate of $2.00 per car, and that the Tenn. Cent. be required to reciprocate (33 I. C. C. 76, 91).

> The Commission found that: "Under all of the circumstances disclosed we are of the opinion and find that defendant's refusal to switch competitive traffic to and from the Tenn. Central at Nashville, on the same terms as non-competitive traffic while interchanging both kinds of traffic on the same terms with each other is unjustly discriminatory, and that so long as defendants switch both competitive and non-competitive traffic *for each other* at Nashville at a charge equal to the cost of the service, exclusive of fixed charges, the charges imposed for switching *Tenn. Cent.* traffic should not exceed the cost of the service performed."

The validity of this last order was also contested by the defendants, but the District Court for the Middle District of Tennessee, Nashville Division, dismissed their bill attacking the order.

This "Nashville switching" case bears a close analogy to the case at bar on this point, therefore we venture to quote at some length from the opinion of the latter Court (*L. & N. R. R. Co. et al. vs. U. S. et al.* 227 *Fed. Rep.* 258, at 269, italics ours):

> "The operation jointly carried on by the Louisville & Nashville and the Nashville & Chattanooga under the Terminal's agreement is not a mere exchange of trackage rights to and from industries on their respective lines at Nashville, under which each does all of its own switching at Nashville and neither switches for the other. It is, on the

contrary, in substance and effect, *an arrangement* under which *the entire switching service for each railroad* over the joint and separately owned tracks *is performed jointly by both,* operating as principals *through the terminals as their joint agent,* each railroad, as one of such joint principals, hence performing through such agency switching service *for both itself and the other railroad* and *the fact* that *the charge for such joint switching service* is made on an approximately proportionate basis of *actual cost,* exclusive of fixed charges, against the railroad having the transportation haul *does not,* in our opinion, *change the underlying* and dominant *fact that the switching service itself* is performed *by both railroads jointly,* that is, by each railroad operating as a joint principal through the means of the joint agency; the apportionment of the expenses relating only to the payment for the service and not to the joint performance of the service itself. And, *viewed in its fundamental aspect,* and considered with reference to its ultimate effect, *we entirely concur in the conclusion of the Commission* that *such joint switching operation* 'is *essentially the same as a reciprocal switching arrangement*', constituting a facility for the interchange of traffic between the lines of the two railroads, within the meaning of the second paragraph of section 3 of the Interstate Commerce Act. *That each railroad does not separately switch for the other, but that such switching operations are carried on jointly,* is *not, in our opinion, material.* If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers could be easily put beyond the reach of the act, and its remedial purpose defeated, by the simple device of employing a joint agency to do such reciprocal switching. *The controlling test of the statute, however,* lies in *the nature of the work done* rather than in the particular device employed or the names applied to those en-

gaged in it. See, by analogy, United States vs. Chicago Railroad, 237 U. S. 410, 413, 35 Sup. Ct. 634, 59 L. Ed.

Being, in effect, a reciprocal switching operation carried on by the Louisville & Nashville and the Nashville & Chattanooga, constituting a facility for the interchange of traffic between these two railroads, it necessarily follows, under section 3 of the Interstate Commerce Act, that *equal facilities must be afforded all other lines for like interchange* of traffic, *without discrimination,* and that, under section 15 of the act, *the Commission is authorized to require the railroads* performing such reciprocal service *to desist from any discriminatory service,* in respect to such switching operations. Pennsylvania Co. vs. United States 236 U. S. 351, 35 Sup. Ct. 370, 59 L. Ed.; Louisville Railroad vs. United States, Supra, 238 U. S. 20, 35 Sup. Ct. 696, 59 L. Ed.; Louisville Railroad vs. United States (D. C.) Supra, 216 Fed. 683."

And on page 271 this Court said further:

"Neither is the order invalid as to the Louisville & Nashville by reason of the fact that it has no direct connection with the Tennessee Central within the switching limits of the terminals, since it, as a party to the terminals' agreement, is carrying on switching operations for itself and for the Nashville & Chattanooga over the tracks of the Nashville & Chattanooga, which connect with the tracks of the Tennessee Central by an interchange track within such switching limits."

Upon the authority and reasoning of the above decisions, we respectfully submit that *the existence of reciprocal switching arrangements between the trunk lines, did not suffice as a matter of law,* to permit or require the St. Louis terminals of the six trunk lines *to be treated as an integral part of all the trunk lines,*

or the terminal switching performed by them for other carriers to be treated as a part of the line hauls of the latter, or to *prevent* the *conclusion of undue discrimination* against the Railway, as *a necessary legal conclusion* from the facts found by the Commission.

(e) *The decision of the Commission in the case at bar on the question of discrimination, is directly contrary to and irreconcilable with its decisions in analogous cases.*

In the case of In re Switching Chicago District, 34 *I. C. C.* 234, *at* 247 (decided June 7, 1915), the controlling facts are, we respectfully submit, "on all fours" with those in the case at bar, and the Commission applied the very principles which we seek to have applied in the instant case. In that case the Commission held that the proposed action of the trunk line carriers in cancelling certain allowances or divisions to the terminal switching carriers had not been justified, and ordered *that the carriers continue in effect the old tariffs making such allowances.*

For present purposes it is sufficient to state that for several years prior to the proposed cancellation of said divisions or allowances the Chicago common rate applied to points or stations within the Chicago District, on the lines of the Chicago Tunnel Company and of the Merchants Lighterage Company. The tunnel company operates an electric railroad underneath the streets of Chicago, the gauge of which tracks are two feet. Access to the tunnel from the surface is afforded by elevators which connect with the stations of the various railroads as well as with commercial houses or industries (p. 236):

"At freight stations of the trunk lines the Tun-

nel Company elevates its loaded cars to the floor level, where they are moved from the elevators on to tracks laid upon the floors of the stations and are unloaded by the employees of the line haul carriers. Inbound shipments taken from the freight stations of the line haul carriers by the Tunnel Company are handled in a similar manner."

The Tunnel Company has two classes of stations, "Universal" stations at which are received and delivered less than carload shipments, and "Commercial" stations located at industries or commercial houses and which are analogous to private sidings. The Tunnel Company receives its compensation *out of the through rates*, without limitation as to the amount of freight taken from or delivered to the line haul carriers, on all freight originating at or delivered to its universal stations. From its commercial stations it receives compensation *out of the through rates* under certain conditions relating to certain minumum quantities delivered, etc., and to the gross revenue accruing to the line haul carriers.

The Lighterage Company is a terminal company conducting transportation on the Chicago River and connecting water-ways. It maintains "Universal" stations, at which freight is received and delivered for all who desire to use them, and it also serves certain industries at docks or landings not used by other industries or shippers. It issues bills-of-lading, assorts shipments for delivery to the defendant line-haul carriers, conveys them to the rail terminals, and trucks them into the cars. Inbound shipments are taken from the cars by employees of the Lighterage Company and are delivered at the landings of the industrial stations

to teams or in the warehouses of the universal stations; for such services it is paid by the trunk lines, under certain restrictions, *divisions or allowances out of the Chicago rates.*

Certainly, the character of the services performed by these carriers within the Chicago Switching District cannot be distinguished in its essence from the character of the terminal transportation services performed within the St. Louis Switching District by the Railway, the Terminal and the six trunk lines.

Both of the Chicago terminal companies have been held by the Commission to be common carriers subject to the Act to Regulate Commerce, and so has the Railway.

In the Chicago Case the Commission held that should the trunk lines cancel said allowances they would be *guilty of discrimination against the terminal companies as well as against shippers located on their respective lines,* and further held that the trunk lines had *not justified the proposed cancellation,* and entered an order commanding them to continue in effect their tariffs making such allowances.

In the case at bar, the Commission held that it *had no authority* to make *a similar order* against the St. Louis trunk lines.

On the question of discrimination, the Commission said, in the Chicago case (34 I. C. C. page 239):

> "We see no substantial difference between the services performed by the tunnel and lighterage companies and those performed *by the line-haul carriers for each other* or those performed for the line-haul carriers *by the several belt-line or industrial railroads within the switching district.*"

And further (p. 239, 240):

"The justification for cancellation of through rates with the tunnel and lighterage companies consists mainly in the declaration that the line-haul carriers are within their rights in taking such action because the service rendered by the tunnel and lighterage companies is a service *beyond the rails of the line-haul carriers,* for which they have a legal right to insist upon an additional charge. They show the amounts paid to the tunnel and lighterage companies out of the through rates, but they *fail to present any evidence to show that the increased charges to those who use or are dependent upon the tunnel or lighterage company will be reasonable,* and practically *ignore* the question of *unjust discrimination* against shippers and consignees which would thereby be created. *If the line-haul carriers join with each other and with various industrial or short-line railroads and belt-line railroads in applying Chicago rates to and from industries within the Chicago switching district, we fail to see how unjust discrimination could be avoided if they refused to accord the same rates and services to industries within the districts that are served by the tunnel and lighterage company.*"

And further (p. 241): "Respondents rely upon the right which they assert to conclude arrangements for joint rates with a terminal line involving service rendered beyond the rails of the line-haul carriers, provided no unjust discrimination results therefrom. We find, however, that the cancellation of such rates here involved *would result* in unjust discrimination against *the tunnel company,* the *lighterage* company and *shippers* and *consignees located on their lines.* The situation in Chicago is such that no single carrier can adequately serve the public with its own rails. It must enter into arrangements with other carriers which are in essence extensions of its rails.

> Transportation activities in and rates to and from Chicago are subject to conditions of intense competition. All this has led to the establishment and long maintenance of arrangements between the trunk lines themselves and with numerous terminal and belt lines within the Chicago district, which, as has been seen, have long included the tunnel and lighterage companies. No sufficient justification has been shown for *singling them out* from among the *other terminal carriers* or agencies in the Chicago switching district for withdrawal of the common or uniform application of the Chicago rates." (italics ours)

And yet in the case at bar the Commission held that it *could not lawfully* make an order *requiring* the trunk lines to extend their service beyond their own rails without additional compensation. In short, that it could not *require* the carriers to restore their former tariffs, saying (28 I. C. C. p. 101):

> "Sometimes, for competitive or other reasons, a trunk line will absorb the charge of a connecting terminal line for gathering freight originating on the latter to the rails of the trunk line. Manifestly such service of the terminal line is one performed for the trunk line and not for the shipper, and should be paid for by the trunk line and not by the shipper. While the trunk line may thus make such absorptions *voluntarily*, we have not had cited to us and are not ourselves familiar with any principle of law under which the Commission *could compel* the trunk line thus to bear not only the expense of the service of a connecting terminal line but the reasonable profit in addition which presumably will be included in the terminal carrier's rate. We are speaking now of a terminal line which is in all respects a carrier subject to the act."

It is not surprising that the Chicago carriers confidently relied for a justification of their proposed action in cancelling the divisions or allowances paid to the tunnel company and lighterage company, on the reasoning and conclusions which the Commission had previously expressed in the case at bar. In disposing of that contention the Commission said (34 I. C. C. p. 241):

> "Respondents cite Manufacturers' Railway Company vs. St. L., I. M. & S. Ry. Co., 28 I. C. C. 93, as sustaining the position which they have assumed in the instant case. The conditions existing at St. Louis and considered in the case cited are so different from those in Chicago now considered as to render that case inapposite."

With all due respect to the Commission we respectfully submit that there is no distinction in principle between the Chicago case and the case at bar. If the same legal principles which were applied in the former case had been applied in the latter, the Commission's order would have required the trunk lines to restore their former tariffs making allowances or divisions to the Railway for its services.

The Industrial Railway's Cases Although the final decision of the Commission in the case at bar was rendered July 10, 1914, which was subsequent to the decision in the Industrial Railways case (first case), 29 I. C. C. 212, decided January 20, 1914, (in which the Commission very generally condemned payments by trunk lines to so-called industrial railways), it decided in the instant case that complainant Railway did not come under such condemnation, *i. e.*, that the services rendered by it were not "intra-plant" or "shippers'" services but were *transportation* services, because in

the case at bar it held that it was *lawful* for the trunk lines to *voluntarily* pay the Railway out of the St. Louis rates for such services. Such holding conclusively shows, that in the opinion of the Commission, the switching services of complainant Railway were not of the character found to exist in that class of cases known as the "plant facility cases," viz: General Electric Co. vs. Railroad, 14 I. C. C. 237; Solvay Process Co. vs. Railroad, 14 I. C. C. 246; Crane Iron Works vs. Railroad, 17 I. C. C. 514; in which cases the principle was announced that:

> "If the service in any instance is *a plant service* the trunk line carriers cannot lawfully compensate the shipper itself, or indirectly through its incorporated plant railroad, for the use of its plant tracks or for switching the shippers' cars over them with its own motive power." (2nd Industrial Railways case, 34 I. C. C. 596, 601).

As the Commission itself thus distinguished the case at bar from the foregoing line of cases it is unnecessary to discuss them, except to say that the Commission's views, as expressed in the first Industrial Railways case, *supra*, were considerably modified in the second Industrial Railways case, *supra*, by reason of this Court's decision in the Tap Line cases, 234 U. S. 1.

However, upon the question of discrimination by the trunk lines in their treatment of such industrial common carriers, we desire to call attention to one of the latest decisions of the Commission, *Lorain & So. R. R. Co. vs. R. R.*, 37 *I. C. C.* 497.

Following the report of the Commission in the first Industrial Railways case, the Lake Shore & Michigan Southern Railway Company filed a tariff cancelling a

switching allowance of one dollar on carload shipments received and delivered to the Lorain & Southern Railroad Company; the latter company protested this cancellation, alleging that it subjected shippers on its line to undue and unreasonable prejudice and disadvantage.

The facts were as follows: For the purpose of providing a means of outlet for its products the Ohio Quarries Company, owning and operating a quarry plant at South Amherst, Ohio, incorporated the Lorain & Southern Railroad Company and constructed a track from its property to a point on what was known as the "quarry branch" of the Lake Shore Railroad. The entire capital stock of the Lorain & Southern, except directors' shares, was owned by the quarry company. The officers of the Railroad and quarry companies were practically identical. The Lorain & Southern owned and operated 4.61 miles of track of which 0.86 of a mile was designated as main track and 3.75 miles as side tracks. The equipment consisted of one engine, 12 flat cars and 9 dump cars. With the exception of its main track, all of its rails were shifted from time to time to reach new openings, or were changed as desired by and at the expense of the quarry company. It conducts a freight business exclusively, and the principal service performed is the switching of cars between the quarry property and the junction point with the Lake Shore; and intra-plant service also is performed in shifting cars about the quarry property. Approximately ninety-seven per cent of the traffic was provided by the quarry. The only other industry served by it was the Ohio Cut Stone Co., which buys its supply of rough stone from, and is located on the property of, the quarry company. Two public team

tracks were maintained for the benefit of outside shippers and these tracks were said to serve six coal and fertilizer dealers and occasionally farmers. The Lorain & Southern made reports and kept its accounts in accordance with the rules of the Commission.

The Cleveland Stone Co. also operated a quarry, and its property adjoined that of the Ohio Quarries Co. but was located on said branch of the Lake Shore Railroad. These two quarry companies were competitors. When connection was made originally between the Lake Shore and the Lorain & Southern, the former road established a charge of one dollar per car for all movements over its quarry branch, and the Lorain & Southern assessed a charge of one dollar per car for the service it performed in switching cars between the quarry company and the junction with the Lake Shore. These charges placed the quarry company in the position of having to pay $2 per car in addition to the rates from Amherst, whereas the Cleveland Stone Co. (being located on the Lake Shore branch) had to pay only $1.00 per car, the charge made by the Lake Shore for movement over its branch. Subsequently the Lake Shore discontinued the charge of one dollar over its quarry branch and applied the through rate to Amherst to the quarries of the Stone Company, and also to the quarries of the Quarries Company, by absorbing into the Amherst rate the switching charge of the Lorain & Southern of one dollar per car. This allowance, as before stated, was thereafter withdrawn, which gave rise to the case before the Commission, the Lorain & Southern asking for the restoration of the former allowance.

On page 501 of its opinion, the Commission said that

the controlling question is whether or not the Lake Shore under its present rates and practices was giving to the Stone Company and its traffic an undue and unreasonable preference and advantage, while subjecting the Quarry Company and its traffic to an undue and unreasonable prejudice and disadvantage, in violation of the provisions of Section 3 of the act. The Commission found that such a violation existed and an order was entered requiring the Lake Shore to cease and desist. In conclusion the Commission said:

> "The Lake Shore may remove the discrimination condemned by making reasonable allowances or divisions to the Lorain & Southern, or by such other method as it may deem appropriate. So long as it is lawful, we are not concerned with the method which the Lake Shore may adopt to fulfill its obligation under the act" (Lorain & Southern R. R. Co., 2nd Industrial Railways case, 37 I. C. C. 497).

Another case similar to the case at bar recently decided by the Commission, is that of *East Jersey Railroad & Terminal Co. vs. Railroad Co., et al.* 36 *I. C. C.* 146, (decided July 30, 1915).

The East Jersey Railroad & Terminal Company, hereinafter referred to as the terminal company, is a corporation operating a short standard gauge railroad extending from a junction with the Central Railroad of New Jersey at Central Avenue, Bayonne, N. J., south to a pier on the Kill von Kull, a water-way connecting Newark Bay and New York Harbor; and, in conjunction therewith, a fleet of tugs and barges in New York Harbor. It has no passenger service.

For a number of years prior to April, 1914, defend-

ants in the proceedings participated with the terminal company in the publication of tariffs carrying joint rates between various points and points in New York, N. Y., including points in New York Harbor within the established lighterage limits. Joint rates to New York, which are generally the same as to Bayonne, included lighterage to points in New York Harbor within the lighterage limits or on board vessels for export.

Defendants, except the terminal company, filed certain tariffs, to become effective at different times during April, 1914, in which that Company was not permitted to join. After the effective dates of those tariffs, shipments moving over the lines of the other defendants and the rails and lighters of the terminal company to points in New York Harbor, or to vessels in that harbor for export, have been assessed the terminal company's local rail rate of 1 cent per 100 pounds and its lighterage charge of 3 cents per 100 pounds *in addition* to the rate to Bayonne.

The substance of the two complaints was that both the terminal company and the complainant wished to have the joint rates restored, including transit and lighterage service, and they attacked the new rates and tariffs as "unjust and unfair, unduly burdensome, discriminatory, and unlawful." Both asked reparation.

Under the joint rates formerly in effect the terminal company received a division of 3 cents per 100 pounds on freight for delivery at points in New York Harbor or on board vessels in the harbor for export.

The complainant was making shipments in considerable volume over the rail line and lighters of the ter-

minal company. From points where the joint rates were formerly in effect over the terminal company's rails and lighters the new rate was 4 cents per 100 pounds more than it had been prior to April, 1914. As to two of its competitors, served by some of the defendants whose rates to New York were formerly the same as complainant's, the rates were not increased. These competitors were engaged in the same general business and sold in practically the same markets as complainant. They were within the established New York lighterage limits and paid New York rates. In competition with them complainant became at a disadvantage of 4 cents per 100 pounds where prior to April, 1914, it was on an equality. As complainant had to buy material at the market price and sell its products at the market price, the additional freight charge of 4 cents per 100 pounds was absorbed by it, and diminished its profits to that extent.

In deciding the complaint, the Commission said (p. 149):

> "The terminal company and complainant have made out a *prima facie* case of *unjust discrimination* against the *former* (terminal company) and shippers on its line. Under the statute the burden of proof to show that the increased rates are just and reasonable rests upon the common carrier. In Rates on Hay to Chicago, 34 I. C. C., 150, 152, the Commission said:
>
> 'The burden of proof of the reasonableness of rates increased after January 1, 1910, is upon the carriers, both as to the total or through charges and the separately established or separately stated charges which made up the total. (People's Fuel and Supply Co. vs. G. T. W. Ry. Co., 27 I. C. C. 24; Newport Mining Co. case, 33 I. C. C. 645.) And it is as much an increase of rate to give less

service for the same amount as to charge a greater amount for the same service. (Washington, D. C. Store-Door Delivery, 27 I. C. C., 347; Transit Regulations on Grain and Dried Beans, 32 I. C. C.,38.)'

The Commission passed upon a situation somewhat similar from a legal standpoint to that here involved in Rates in Chicago Switching District, 34 I. C. C., 234. It there said, p. 242:

'For each rate a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, the delivery at that point it in no sense a 'free service.' The carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged it must bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination.' "

"In this proceeding defendants have failed to sustain the burden of proof imposed upon them by law. The joint through rates which the terminal company and complainant seek to have restored had been in effect without substantial change for five years or more.

We therefore conclude that the present rates of defendants, including the terminal company, for the transportation of property in interstate or foreign commerce to New York, including points upon New York Harbor within the established lighterage limits and on board vessels in New York Harbor for export, which have replaced joint rates in which the terminal company formerly participated, are unreasonable and unjustly discriminatory to the extent that they exceed such joint rates in effect March 31, 1914.

Defendants should at once restore joint rates in conjunction with the terminal company, not in excess of those in effect March 31, 1914, including

lighterage and transit; and as no justification of the cancellation of the latter and of the resulting increased through rates was offered, it is assumed that this will be done without the issuance of an order. If not done within sixty days from the date of service hereof the matter may be brought to our attention for appropriate action.

At the hearing the terminal company made no effort to press its claim for reparation. Indeed, it is not clear upon what theory it could be awarded reparation. Manufacturers' Railway Co. vs. St. L. I. M. & S. Ry. Co., 28 I. C. C., 93, 107.

Complainant has made a *prima facie* showing of damage sustained on shipments moving over the lines of defendants in No. 6900 (Sub-No. 1) to New York, including points in New York Harbor within the established lighterage limits and delivery on board vessels in New York Harbor for export, to the extent that complainant paid and bore charges in excess of those that would have accrued under the joint rate in effect prior to April 1, 1914; and it is entitled to reparation on such shipments."

We respectfully submit: that the foregoing decisions of the Commission, follow the same rule of law upon the question of *reciprocal switching* and *discrimination* which we sought and still seek to have applied in the case at bar; and that the Commission's conclusion in the instant case produced an anomalous result which was contrary to the Commission's own attitude in analogous cases, as well as contrary to the law as established by decisions of this Court.

(6) *Having erroneously concluded that there was no undue Discrimination, the Commission erred further in also concluding that there is a legal Distinction between "Divisions of Joint Rates," and "Absorptions*

of Switching Allowances," upon which to base its Conclusion that while it had Power under the Act to prescribe such "Divisions," it lacked Power to prescribe such "Absorptions," and that therefore (in the Absence of Discrimination), the Restoration of the Railway's Absorptions must be left to the Volition or Grace of the Trunk Lines.

The distinction made by the Commission on that point, was arbitrary, without substances, and erroneous in law.

So also was the attempted (but *equally erroneous*) *companion distinction that "allowances" relate to services rendered for the account of the trunk line, whereas "divisions" relate to services rendered for the account of the shipper.*

(*a*) *The Commission has the power which it thus denied.*

Since *the power of the Commission* is here directly drawn into question, we first invite attention to those provisions of the Act by which the power was granted; —for we respectfully contend that *the Commission did have the power to compel the trunk lines to apply the St. Louis rates to points on the lines of the Railway; and it should have ordered the resumption of the divisions and allowances, not as a matter of grace, but as of right, so long as the trunk lines continued to apply the St. Louis rates to similar shipping points in St. Louis on the lines of the Terminal, or of its subsidiary or proprietary lines.*

Concerning *the power* of the Commission, effective when the Reports were made, the Act to regulate Commerce provided (italics ours):

Section 1, makes it the duty of common carriers "to establish *through routes* and *just and reasonable rates* applicable thereto," and "to establish, observe, and enforce * * * *just and reasonable regulations and practices* affecting rates, etc."

Section 3 prohibits undue preferences (discrimination) by carriers against *shippers, commodities,* or *localities,* in the following language:

> "It shall be unlawful for any common carrier subject to the provisions of this Act to make or give any *undue* or unreasonable *preference or advantage* to any particular *person, company, firm, corporation,* or *locality,* or any particular *description of traffic,* in any respect whatsoever, or to *subject* any particular *person, company, firm, corporation,* or *locality,* or any particular *description of traffic,* to any *undue* or unreasonable *prejudice* or *disadvantage* in any respect whatsoever."

Section 3 also prohibits discrimination by carriers against *connecting lines,* in the following language:

> "Every common carrier *shall* * * * *afford all reasonable, proper* and *equal* facilities for the *interchange of traffic* between their respective lines, * * * and *shall not discriminate in their rates* and charges *between such connecting lines;* but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The proviso in the last paragraph relating to the "use of tracks, etc." by "another carrier" means a use by such other carrier *physically operating over them;* it does not mean an extension of service by establishing joint routes with other carriers and applying

through and joint rates (with divisions or allowances) to such routes.

See Penn. Co. vs. U. S., 214 F. R. (D. C. Penn.), 445, 447, sustained as to this point by this Court, 236 U. S., 351.

Section 15 gives the Commission *power to establish through routes* and *maximum joint rates*, and *to prescribe the divisions* of such rates, and the terms and *conditions* under which such through routes shall be operated, in the following language:

> "The Commission may also, *after hearing, on a complaint* or upon its own initiative without complaint, *establish through routes* and joint classifications, and *may establish joint rates as the maximum* to be charged and may *prescribe the division of such rates* as hereinbefore provided, and the *terms and conditions under which such through routes shall be operated,* whenever the carriers themselves *shall have refused or neglected to establish voluntarily* such through routes or joint classifications or *joint rates.*"

It will be noted that the foregoing power is *limited* to cases in which the carriers themselves have "refused or neglected 'to establish *voluntarily*' such through routes * * * or joint rates."

Section 15 also gives the Commission power, *extensive in its scope, to correct "after full hearing upon a complaint"* any *unjust, unreasonable,* or *discriminatory rate, regulation,* or *practice,* and *to prescribe and order* what maximum rate, and what regulation, or practice *shall be adopted* in connection therewith, in the following language:

> "Whenever *after full hearing upon a com-*

plaint * * * the Commission shall be of opinion that any individual or *joint rates* or charges whatsoever * * * for the transportation of persons or property * * * or that any individual or *joint* * * * *regulations or practices* whatsoever * * * are *unjust* or *unreasonable* or *unjustly discriminatory*, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered *to determine and prescribe what will be the just and reasonable* individual or *joint rate*, or rates, charge or charges *to be thereafter observed* in such case *as the maximum* to be charged, *and what* individual or *joint* * * * *regulation or practice* is *just, fair and reasonable*, to be *thereafter followed*, and *to make an order* that the carrier or carriers *shall cease and desist* from such violation to the extent to which the Commission finds the same to exist, and *shall not* thereafter publish, demand or collect any rate or charge * * * in excess of the maximum rate or charge so prescribed, and *shall* * * * *conform to* and observe *the regulation or practice so prescribed.*"

And further:

"Whenever the carrier or carriers, in obedience to such order of the Commission *or otherwise*, in respect to *joint rates*, fares or charges, *shall fail to agree among themselves upon the* apportionment or *division thereof*, the Commission may, *after hearing*, make a supplemental order, *prescribing the just and reasonable proportion* of such joint rate *to be received by each carrier party thereto*, which order shall take effect as a part of the original order."

We respectfully contend that under the foregoing provisions, the Commission *had the power* upon the record before it to *compel* the trunk lines to apply the

St. Louis rates, and might and should have done so on either or both of two grounds, viz.:

Under its power, "after hearing upon a complaint," *to establish "joint rates* as the maximum to be charged" and *to prescribe "the division* of such rates * * * and the terms and conditions under which such rates shall be operated," the record before the Commission having shown that the carriers *had refused voluntarily to establish such joint rates.*

Under its power, "after full hearing upon a complaint," and upon a finding of "undue *discrimination,*" or that the rates, regulations, or practices, which had been made effective by the cancellations of March 1, 1910, were "*unjust or unreasonable,*" "to *determine* and *prescribe* what *will* be the *reasonable* maximum joint *rate* to be charged, and what *regulation* or *practice* is reasonable *to be thereafter followed;* and to compel the carriers to conform thereto."

And the Commission had the further incidental power, since the record showed that the carriers had refused "to agree among themselves upon *the apportionment or division* of joint rates," *to prescribe the proportion of the joint rate to be received by each carrier.*

While the Commission concedes its power in the case at bar to establish through and joint routes and rates applicable to points on the Railway, for by its Order it has undertaken to establish such routes and rates, it held and contends in respect of the two "grounds" last above stated, thus:

A. Concerning the first ground, it held on the record before it, and upon a complaint which sought a

"re-establishment" of "rates and divisions" *as the same had existed* prior to March 1, 1910; that it *could not prescribe "divisions of joint rates,"* because prior to March 1, 1910, the Railway *had not received "divisions of joint rates"* (a term which the Commission held to mean, compensation for services rendered *to* and *for the account of shippers*), but had received *mere "absorptions"* of switching allowances (a term which the Commission held to mean, compensation for services rendered *to* and *for the account of the trunk lines*).

Its refusal of "prescribed divisions" was therefore based on *an assumed distinction in essence* between *"divisions* of joint *rates"* and *"absorptions* of switching *allowances,"* a distinction which we respectfully contend, and shall show, was *arbitrary, without substance,* and *erroneous as a matter of law.*

Therefore, the relief prayed, could and should have been granted under the conceded power to establish through and joint routes, fix the maximum rates applicable thereto, and *"prescribe the divisions thereof."*

B. Concerning the second ground, it again conceded its power in the abstract, held (correctly) that its exercise of the power depended upon its first finding "undue discrimination, etc."—but concluded that no undue discrimination existed, and (as we have shown) reached that conclusion arbitrarily without any substantial proofs to support it, and by basing it entirely on an erroneous interpretation of the law established by this Court in the Terminal and Stickney cases.

Accordingly, having denied its power in this case *to compel* divisions or absorptions, it held that the trunk

lines *may* make (or refuse) such absorptions *voluntarily*, thereby (as we shall also show) committing the Railway to the tender mercies of its competitors, and sanctioning unjust discriminations against the Railway, its shippers, and their industrial locality.

The Commission, while thus conceding its power, in the abstract, under each ground, held in effect that in the case at bar it could not *compel* the trunk lines to extend their service *beyond their own rails* and over the tracks of the Railway, *without additional compensation* for the latter service, and therefore its order requires (in case the trunk lines do not "voluntarily" absorb the charges of the Railway) that the joint rate be something *in addition to the St. Louis rate*.

And yet the record before the Commission contained all of the conditions or elements essential under the Act, to permit the exercise of the Commission's power *to compel* the application of the St. Louis rates to points on the line of the Railway, upon either of the two grounds above statd, *i. e.*:

(A) It had held a "hearing upon a complaint" which sought to have the Commission *establish* maximum *joint rates*, and *to prescribe the divisions thereof*, and the conditions under which such rates were to be operated, viz.; all *as they had been prior to March* 1, 1910; and the record showed that the carriers had refused to *voluntarily* establish such joint rates.

The Complaint before the Commission had charged, in part, that tariffs under which the Railway and its shippers had enjoyed through and *joint rates*, and under which the Railway had received *divisions* of such rates, had unlawfully been cancelled as of March

1, 1910; that the trunk lines *were refusing* longer to continue the rates which had been effective up to March 1, 1910 (which necessarily meant that they *could not agree with* the Railway upon the joint rates, divisions or allowances to be effective after that date); that the Railway and its shippers were claiming that the result was unduly *discriminatory* as to each of them, and the shippers were also claiming that *the new rates* thus imposed on them *were unreasonable,* in that shippers would thereafter have to pay the charges of the Railway in addition to the St. Louis rates (which necessarily meant a "new and increased rate"); and the complaint prayed, "that after due hearing * * * an order be made *commanding* the defendants * * * to establish or re-establish through routes and through or *joint rates* over their lines and the lines of the Railway *as the same existed prior to the first day of March,* 1910, and *to cease and desist from longer refusing* to establish or *re-establish said* through routes and said through or *joint rates,* and that *it be determined* herein *what shall be the proper and reasonable division* of said through or *joint rates* * * * and that the defendants be ordered and *required* to establish or *re-establish and maintain* for the period of two (2) years from the date of the order herein, *the said* through routes and through or *joint rates as the same existed prior to said first day of March,* 1910, and that due reparation be awarded to said complainants and each of them, and for such other and further order or relief as the Commission may deem necessary in the premises."

(B) The Commission had held "a full hearing upon a complaint" concerning the questions of undue *discrimination, unreasonable practices, unreasonable rates,* and *what should be prescribed in lieu thereof;*

and the record before it showed that the carriers had *"otherwise"* than after an order of the Commission, *failed to agree upon divisions.*

The said attempted distinctions which the Commission made in denying its power, were expressed by it, thus (Second Report, 103, italics ours):

> "There is, therefore, we think, *in legal effect*, a well defined distinction between *an absorption* which may be made by a trunk line *voluntarily* and the *division of the joint rate* which may by lawful order be *prescribed* by this Commission. This being so, it follows that *there is also in legal contemplation* a well defined distinction between *the character of the services* rendered by the railway *under the absorption tariffs* of the trunk lines *formerly in effect*, and *the same services under the joint rate which could by lawful order be prescribed by this Commission.*" And again (on pages 105, 106):
>
> "That the payments formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation *for services* rendered *to the trunk lines* and were in no sense divisions of joint rates as *for services* rendered *for the shippers* served by the railway, as they would be considered to be under joint rates prescribed by order of this Commission. * * * That *under joint rates so prescribed* that part of the service performed by the railway would be in the contemplation of the act a service *performed for the shipper* to be paid for *by the shipper* and *could not be construed* by the Commission to be a service *rendered for the trunk lines*, the expense of which *could be required* by the Commission's order to be borne by the trunk lines."

(*b*) *The distinction which the Commission thus attempted to make between "Divisions of Joint Rates"*

and "Absorptions of Switching Allowances" was arbitrary, without substance, and erroneous as a matter of law.

No such distinction is found in the Act. That no essential distinction exists, between an "absorption" and a "division" as applied to a participation in a through and joint rate, will be seen at once when the essence of the transactions covered by those technical tariff terms is considered.

An "*absorption*" means that *by agreement* of all the carriers participating in the transportation of freight moving under a through and joint rate, the line carriers will absorb into the through rate (*i. e.*, pay out of it) the "allowance," or charge (theretofore agreed to between the carriers), as the amount to be paid to the terminal carrier for its part of the transportation service. Tariffs usually express "absorptions" or "allowances" in the form of either a fixed number of cents per hundred weight (with a prescribed minimum weight), or on a flat basis of so much per car, which "allowances" or "charges" the line carriers agree by their "absorption tariffs" to absorb into the through rate. In either form it entitles the terminal carrier *to share, upon the agreed basis, in the revenue produced by the through rate,* and it is *a part of the through rate* as disclosed by the tariffs.

A "division" also, *by agreement* of all the participating carriers, entitles each carrier which is a party to it, to share in the revenue produced by a through rate, either in a fixed proportion, or on some other agreed basis. A division is evidenced in tariffs by what are called "division sheets," *i. e.*, tariffs showing the various "divisions" agreed to between the car-

riers parties thereto, in respect of certain through and joint rates.

In their essence, therefore, "divisions" and "allowances" equally consist of *an agreed participation in the revenue arising out of a through and joint rate, and they are nothing more, or different.*

The differences between them, all relate to *the forms* in which they are expressed in the tariffs (*i. e.,* either "division sheets," or "absorption tariffs"), and to such differences in accounting as are due to their differences in form.

We respectfully submit, that since their nature must be determined by matters of essence regardless of form, it is clear that the "absorption of a switching allowance" for a terminal transportation movement which constitutes part of an interstate shipment, is equivalent to a "division" of the rate, and that therefore under the power "to establish through and joint rates, and to prescribe the *divisions thereof.*" the Commission had the power *to prescribe* such divisions in the form either of what are technically called "divisions" (as known to tariff men), or of what are technically called "absorptions" of terminal switching allowances.

The Act must have intended the word "divisions" to apply equally to "allowances," because the Act nowhere refers to "allowances" or "absorptions" as between carriers, although the practice of dividing the revenue under both forms has been long established in railroad practice; and it should be noted, that the Commission virtually rejects its own distinction, for on page 103 (second Report 28 I. C. C.), it says: "We

are not to be understood as saying that when carriers in the through route under their tariffs *absorb the switching charge* of a terminal line, *the resulting rates are not to all intents and purposes, and in fact, joint rates so far as concerns the shipping public.*"

If, as the Commission here concedes, allowances for terminal switching are "to all intents and purposes, and in fact," parts of "*joint rates so far as concerns the shipping public,*" it necessarily follows that they are parts of *joint rates,* so *far as concerns the participating carriers.* They cannot be "fish for one and fowl for the other"; nor do they change their essence when expressed in different words, or evidenced by different forms of tariffs, or looked at from different points of view.

And since in the form of "absorptions," they are agreed parts of "joint rates," they are exactly equivalent in their essence to agreed "divisions" of joint rates.

This identity in essence was recognized (or assumed) by this Court in *Fourche River Lumber Co. vs. Bryant Lumber Co.,* 230 U. S. 316, at 322 and 323.

In that case there was a railroad corporation, the Fourche River Valley and I. T. R. R., substantially all the stock of which was owned by the same persons who owned the stock of the Fourche Lumber Co. The Fourche Railroad performed terminal transportation (to reach timber, etc.) for both the Fourche Lumber Company and the Bryant Lumber Co. The charges of the Fourche Railroad, for its (terminal) part of the through movement were *absorbed* by the connecting trunk lines into the through rate, its share of the rate

being *in the form of allowances.* The case before this Court involved the question whether the allowances to the Fourche Railroad covering shipments made by the Bryant Company constituted rebates, because of the fact that the same individuals owned and controlled the stock of the railroad and of one of its principal shippers. The case is therefore pertinent to other features of the case at bar, but is cited and quoted here, with special reference to the interchangeable use made of the words "divisions" and "allowances" (italics ours):

In "stating" the case, the following language was used (page 320): "Out of this *through rate* the Rock Island *allowed* two, three, and three and one-half cents to the Fourche Railroad, etc. This *division of through rates* * * * was noted on the tariffs," etc.

There was a judgment below based on a holding that the two Fourche Companies (Railroad and Lumber), should be treated as identical.

In deciding the case, this Court said (pages 322, 323):

> "The Fourche Railroad was not only incorporated as a common carrier, but is treated as such by the Interstate Commerce Commission; and, *under the filed tariffs* of the Rock Island road, *receives a part of the through rate* on all lumber originating upon the line and shipped in interstate commerce. The status of this road is discussed in Tap Line Case, 23 Inters. Com. Rep. 549, and its right to *a division* of the freight recognized, *notwithstanding the fact that the stockholders are the same as those who own the shares of the Fourche Lumber Company.* But it receives this *part of the through rate,* not as a concession, but

for services actually rendered by it as a common carrier in hauling freight for part of the distance between the point of origin and the point of destination. In any other view it would have been unlawful for the Rock Island to pay, and, if so, no agreement to divide such unlawful receipts would be enforced by the courts. On the other hand, if the Fourche Railroad was lawfully paid for services in hauling the lumber, it would be illegal, directly or through a subsidiary, to give to the shipper a *part of such joint rate* under any pretext whatever." * * * "The suit in the present case proceeds on the theory that the Fourche Lumber Company and the Fourche Railroad are the same, and that therefore *the division of the through rate allowed* to the railroad was in fact received and enjoyed by the lumber company. And yet, notwithstanding that fact, it is claimed that if the Fourche Lumber Company should, under the contract, pay a part of that freight to the Bryant Company, it would do so as a sawmill, and not as a carrier. The law will not permit such a chameleon-like change. The Fourche Lumber Company and the Fourche Railroad are either the same or different. If they are the same, it cannot refund a part of the rate to the Bryant Company. If they are different, the Fourche Lumber Company was not bound by the terms of the contract to make the payment now demanded. The Court below found that they were *the same*, and *not different*, and it results that its judgment must be reversed."

(*c*) ***The Further and Companion Distinction which the Commission Attempted to Make as a Conclusion of Law in Regard to Allowances and Divisions, viz.; that Allowances Relate to Services Rendered for the Account of the Trunk Line, Whereas Divisions Relate to Services Rendered for the Account of the Shipper,***

is also Arbitrary and Without Substance or Legal Support.

The distinction thus attempted to be made in the "character of the service" rendered, rests upon the proposition that an allowance or division, which is "voluntary," *i. e., agreed to* by the trunk lines, may therefore be treated as covering a *service rendered at the request* and *for the account* of the trunk lines, and may lawfully be paid for *by the trunk lines, i. e.,* out of the through rate; whereas joint rates "*prescribed*" by the Commission, being imposed upon the trunk lines without their actual consent, the services covered by them cannot be considered as rendered *for their account,* to be paid for *out of the through rate,* but must be treated as rendered *for the shippers,* to be paid for *by the shippers, i. e.,* by requiring the payment of some amount in addition to the through rate in order to compensate the terminal carrier for its part of the through transportation service.

The propostion rests upon two errors of law, viz.:

First: In both cases ("voluntary" and "prescribed") the service of transportation and every part of it including that performed by the terminal carrier, is (in law) rendered *for the shipper,* and *none of it for any of the carriers.*

Second: Joint rates or allowances and divisions when "*prescribed*" by the Commission under the powers granted it by the Act, are not *involuntary* as a matter of law, in the sense that they lack the legal *consent* of the trunk lines. Such consent is *implied by law* when the power is properly exercised, and the joint rates and divisions or allowances thus *consented to,* cover services every part of which is performed for

the shippers' account, and none for any of the carriers.

In briefly considering together the two above suggested errors it should be noted that the subject-matter involved, is the service of transporting interstate freight over a through route, under a joint rate, established in the one case by voluntary act of the carriers, and in the other, by order of the Commission, and that the act of transporting is performed partly by the Railway (which renders terminal service in St. Louis), partly by line (and perhaps by other terminal) carriers, which render the rest of the service.

Is any distinction possible, as to *the character of the service performed,* between two cars of freight moving in the same train, between the same points, one under a "voluntary" absorption of allowance, the other under a "prescribed" joint rate with prescribed divisions —*i. e.,* whether that part of the service of transportation which is rendered by the terminal carrier, is rendered *for the trunk line,* or *for the shipper?*

Obviously not. In each case the entire transportation service, and, therefore, each part of it, is rendered *for the public, i. e.,* the ***shipper or consignee.*** Each *participating* carrier, trunk and terminal, *renders its part, for that public,* and no part *for any of the other participating carriers.*

The Railway, in performing its part of the service, cannot be said in either case to serve the trunk lines any more than the trunk lines can be said to serve the Railway. The published tariffs inform the shipper of the rate or portion which each is to receive out of the through rate. Each severally renders its own portion

of the act of through transportation, for the account and benefit of the shipper. Each receives its portion of the through rate *paid by the shipper* (whether such payment comes to the carrier *in the form of a division, or of an allowance,* and whether from the shipper, or consignee, or through some other carrier, *in compensation for its portion of the service* rendered.

No carrier, therefore (trunk or terminal), renders its part of such service *for the account* of any of the other participating carriers, but all of them, each performing its separate part, together render the through unit of service, *for the account of the shipper,* the public.

"Gathering freight originating" on a terminal line, "to the rails of the trunk line," (Second Report, 28 I. C. C. at 101) *is not a service* "performed *for the trunk line,*" when such act of gathering constitutes a *part of the transportation of that freight moving in interstate commerce,* and is to be paid for by a rate or charge prescribed in the tariffs.

It is desirable and convenient to the trunk line to have some other carrier perform that difficult and expensive part (the beginning or end) of the through movement, but the service is performed *for the shipper,* not *for the trunk line.*

This is so when the service is rendered under *joint rates* and *"divisions" voluntarily established;* it is *equally so* when the service is rendered under tariffs providing joint rates and *"divisions" prescribed by the Commission;* and it is likewise so when the service is rendered under *"absorptions* of terminal *allowances."*

And the fact that in business or accounting practice, one carrier line collects the entire through freight from the shipper, and pays to the other lines their respective portions thereof, does not even tend to prove that the services of one of them, the terminal carrier, was rendered for the account of the trunk lines, any more than it tends to prove that one of two trunk lines who participated in the line-haul and in the divisions of the revenue therefrom, rendered its service for the account of the other.

And whether the through and joint rates, and the divisions of them, or allowances out of them, for transportation services rendered by the carriers, are established by *voluntary act* of the participating lines, or are *prescribed* by order of the Commission, the result is necessarily the same. The carriers (terminal and line) who render service at those rates, do so consenting in law to serve the shipping public, in connection with the other carriers whose lines constitute a part of the through routes, over those routes, at the rates, and for the respective portions of such rates, which have been thus provided.

There is therefore *no distinction in law* in respect of either the *character of the service thus rendered,* or the identity of the person *for whom rendered,* or the *right to payment out of the St. Louis rates,* or the rights of the participating carriers or their shippers—between the two classes of cases, *"voluntary" and "prescribed."*

And since the transportation service and every part of it is rendered *for the shipper,* and no part *for the trunk lines,* it obviously becomes immaterial whether the division is *in fact voluntary* (*i. e.,* consented to by

the trunk lines), or ***involuntary*** (*i. e.,* prescribed by the Commission), and adopted by the carriers because so prescribed.

In either case it is *in law consented to by the trunk lines.* In the one case (voluntary), they *expressly* consent; in the other case (involuntary), the carriers having failed to agree, the law *imposes consent* as a condition to their doing the business, and their consent *becomes implied* when they transact it.

By the above argument we do not mean that there are no conditions under which one carrier may become the agent or servant of another, in respect of the act of transportation, but we do mean and respectfully submit, that no distinction between "allowances" and "divisions," or between "voluntary" and "prescribed" participations in the revenue *arising out of through and joint rates,* can be predicated upon the existence of the conditions which obtain in the case at bar.

No rate is "joint" unless every part has been "agreed to" by the carriers. Yet the Act (Section 15) expressly provides that the Commission may establish through routes and *joint* rates, and prescribe divisions thereof, when the carriers have "refused or neglected" to establish them *voluntarily.*

Surely no one could contend that joint rates and divisions thereof established by the Commission pursuant to the Act, are not *"joint"* (*i. e.,* are not *"agreed to"*) because imposed against the actual wishes of the carriers.

After they have been so prescribed, the law *implies the consent* of the carriers, and they are thereafter no

less *joint* in legal effect than if they had been established originally by the *voluntary* act of the carriers.

Having thus shown: that there is no essential distinction between "allowances" made by a trunk line voluntarily, and "divisions" prescribed by the Commission; and that *under either form* the compensation provided by it covers services *rendered for the shipping public;* it follows that the Commission erred in law and exceeded its authority in holding otherwise.

For each of the foregoing reasons, we respectfully contend that the Commission erred in law, that its order was invalid, and that the District Court erred in not enjoining the order to the extent prayed in the petition herein.

III.

REPARATION.

THE COMMISSION ERRED AS A MATTER OF LAW AND ACTED ARBITRARILY, IN HOLDING THAT UNDER NO CIRCUMSTANCES IS A CARRIER ENTITLED TO REPARATION, IN DENYING A HEARING ON THE CLAIM OF THE MANUFACTURERS' RAILWAY COMPANY FOR REPARATION, AND IN IGNORING THE PRAYER OF THE COMPLAINING SHIPPERS FOR REPARATION (Spec. of Error No. 14).

The finding and conclusion of the Commission that it had no power to award reparation to the Railway as a common carrier, for violations by other carriers of its rights under the Act, which ruling seems to have been applied by it to the shippers on the lines of the Railway as well, *is a conclusion of law and contrary to the provisions of said Act.*

A part of Section 3 of the Act is as follows:

> "Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and *shall not discriminate* in their rates and charges *between such connecting lines*, etc."

Section 13 of said Act, among other things provides:

> "That any person, firm or corporation, etc., *or any common carrier, complaining of anything done or ommitted to be done by any common carrier* subject to the provisions of this Act, in contravention of the provisions thereof, *may apply to said Commission by petition*, etc."

Section 8 is as follows:

> "That in case any common carrier, subject to the provisions of this Act, shall do, cause to be done, or permit to be done, any act, matter or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this Act required to be done, such common carrier shall be liable *to the person or persons injured thereby* for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, etc."

Section 9:

> "That any person or persons *claiming to be damaged* by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for,

> or may bring suit in his or their behalf for the recovery of the damages for which, such common carrier may be liable under the provisions of this Act, in any District or Circuit Court of the United States of competent jurisdiction, etc."

If (as we contend) the trunk lines have been guilty of discrimination against the Railway, thereby causing it damage, the Railway had a right to reparation, by the express provisions of the above quoted sections of the Act.

The Railway contended before the Commission, and in the District Court, that unlawful discrimination against it, had been practiced by the trunk lines through their wrongful cancellation of tariffs, causing damage to the Railway, and that under the Act it was entitled to relief by the Commission.

The Commission held that it *had no power* to grant *reparation to a common carrier.*

It is respectfully contended that the Commission acted arbitrarily and in violation of the affirmative rights of the Railway, in thus refusing it reparation for the damages which it, as a carrier, sustained through the unlawful cancellation of the tariffs.

Each of the elements essential to a recovery of reparation, was present in the record before the Commission, namely, proof that the Act had been violated as to the Railway, resulting damage to the Railway, and the measure by which the amount of such damage could have been determined and compensated for.

The complaint alleged and the undisputed evidence proved, that tariffs under which the Railway had been receiving an average of about $4.50 a car, as a division

or allowance out of the St. Louis rates, had been wrongfully and unlawfully cancelled by the trunk lines. Therein lay the wrong to the Railway.

The element of resulting damage also existed, in that whereas under the cancelled tariffs the Railway had the right to receive an average of about $4.50 per car out of the St. Louis rate, the wrongful cancellation of those tariffs *brought into operation* a local rate which was *limited by the city ordinances* to the unremunerative and noncompensatory charge of $2.00 *per car*, so that the Railway was damaged through the wrongful act of the trunk lines to the extent of the difference between the revenue arising from a rate of $2.00 per car, and the revenue which would have accrued from the cancelled rates averaging about $4.50 a car; and the evidence (undisputed) was before the Commission, presenting those facts.

Said limited local rate of Two Dollars per car, had been prescribed by the City of St. Louis, as one of the terms or conditions of an ordinance grant of rights, of way to use city streets for railroad purposes, *i. e.*, the Railway, in effect, had agreed to apply the limited (two dollar) local rate, which was *less than compensatory*, as *a part of the consideration* which the Railway paid for *the right to use the city streets.*

So that when the trunk lines arbitrarily and unlawfully cancelled the tariffs by which the Railway had the right to receive and had been receiving *out of the through rates* an average division or allowance of about $4.50 per car (which was then reasonably compensatory), they thereby created a situation in which the Railway was compelled by the ordinance to accept the *unremunerative* rate of $2.00 per car.

The difference, was the loss unlawfully caused to the Railway by the unjust discrimination which the trunk lines thus practiced against it.

While the order itself is silent on the matter of reparation, that very fact, combined with the ruling stated in the Report to the effect that a carrier cannot receive reparation, constituted an order in effect *denying* such reparation.

That such an order or ruling although negative in form is affirmative in effect, follows from the decision of this Court, in *U. S. v. A. T. & S. F.*, 234 *U. S.* 476.

In that case certain carriers had applied to the Commission for relief against the long and short haul clause of Section 4 of the Act. The Commission *refused to grant the relief prayed*, but entered an order which in some respects permitted a charge of a lower rate for the longer haul than was asked for intermediate points, provided a prescribed proportionate relation between the rates was maintained.

It was contended that the Supreme Court could not review the order because "purely negative, and hence not subject to judicial inquiry."

In deciding otherwise, the Supreme Court said (p. 490):

> "The proposition disregards the fact that the right to petition the Commission conferred by the statute is positive, and while the refusal to grant it may be in one sense negative, in another and broader view it is affirmative, since it refuses that which the statute in affirmative terms declares shall be granted if only the conditions which the statute provides are found to exist."

The same language applied to the point now under discussion, requires the conclusion that while the refusal to award reparation to the Railway is negative in form, "in another and broader view it is affirmative, since it refuses that which the statute in affirmative terms declares shall be granted if only the conditions which the statute provides are found to exist," *i. e.*, if the Act is violated as to rights of the Railway, thereby causing damage to the Railway.

And since those conditions did exist, the Commission erred as a matter of law in denying reparation, and its arbitrary refusal to grant the Railway its affirmative rights under the Act may and should be reviewed by this Court.

Reparation was also arbitrarily denied to the Shippers.

The unlawful cancellation of tariffs, imposed upon shippers an added local rate charge of $2.00 per car, and they were entitled to reparation for the loss thus caused.

Independently of whether the Commission had power to award reparation to the Railway as a common carrier, certainly the power existed as to the shippers located on and doing business over the lines of the Railway and who were parties to the complaint before the Commission, seeking reparation among other things.

In denying its power to make any such award to the Railway, the Commission appears also to have included therein said shippers. It was error, therefore, for the Commission to base its conclusions, in so far as the shippers were concerned, upon a lack

of power to make such award upon a proper showing. The Commission therefore erred in denying jurisdiction in that matter also, and the error was one of law.

IV.

Conclusion.

Having thus shown that the order herein sought to be enjoined, was erroneous in law, and that it is therefore invalid and should have been enjoined by the District Court as and to the extent prayed in the petitions herein, we respectfully contend in conclusion, that the judgment of dismissal should be reversed, with directions to the District Court to grant the relief prayed by the petitioner and intervening petitioners.

Respectfully submitted,

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DANIEL N. KIRBY, Solicitor for Appellants, Intervening Petitioners.

CHARLES NAGEL, of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

MANUFACTURERS RAILWAY COMPANY and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Appellees.

No. 192.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLANT, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

MANUFACTURERS RAILWAY COMPANY and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Appellees.

No. 142.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLANT, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

STATEMENT.

The Manufacturers Railway Company is a common carrier operating a line of railway which reaches the industrial section in the southern part of the City of

St. Louis, Missouri. Appellant, St. Louis Southwestern Railway Company (hereinafter called Cotton Belt) has no rails in this industrial section, but can reach the rails of Manufacturers Railway Company through the St. Louis Transfer Railway, whose tracks connect with the rails of the Manufacturers Railway. Prior to March 1, 1910, the Cotton Belt and the other trunk lines entering the City of St. Louis, in order to compete for business moving to and from industries located on the line of the Manufacturers Railway, provided in its tariffs that on business moving to and from points on the latter line it would absorb the switching charge of the Manufacturers Railway, so that industries located on that line would not have to pay more than the St. Louis rate on business moving to and from their plants; on December 31, 1909, the Cotton Belt and the other trunk lines notified the Manufacturers Railway Company that after March 1, 1910, they would no longer absorb the switching charges of the Manufacturers Railway, and accordingly canceled their tariffs providing for such absorption (21 I. C. C. 305-306). The Manufacturers Railway Company and some of the shippers located on its line thereupon filed a petition with the Interstate Commerce Commission asking for the establishment of through routes and joint rates from and to points on the line of the Manufacturers Railway to and from interstate points. This proceeding was, by the Interstate Commerce Commis-

sion, designated as case No. 3151. After hearing, the Interstate Commerce Commission rendered an opinion in that case, reported in 21 I. C. C. 304 *et seq.*, in which it held in substance that the action of the trunk lines

> "in cancelling the said divisions and absorptions, which have been for many years included in the St. Louis rates, has subjected complainant shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges and to undue discrimination and disadvantage."

In the meantime, many of the trunk lines had again filed tariffs providing for the absorption of the switching charges of the Manufacturers Railway Company and these tariffs had been suspended by the Interstate Commerce Commission. When it rendered its opinion just referred to, the Interstate Commerce Commission canceled the suspensions and permitted the absorption tariffs to become effective (21 I. C. C. 315). Upon a rehearing and reargument of that case, the Commission rendered a supplementary opinion, reported in 28 I. C. C., at pages 93 *et seq.* In this supplemental opinion the Commission took the position that, while it has the right to prescribe through routes and joint rates and while,

"when carriers in the through route under their

> tariffs absorb the switching charge of a terminal line,"

the resulting rates are to all intents and purposes, and, in fact, joint rates so far as concerns the shipping public, since there was no evidence in the case that the St. Louis rate was unreasonable, it could not compel the trunk lines to absorb the charge of a switching line for service rendered in addition to that contemplated by the St. Louis rate. Having concluded that whatever rates were established under its opinion would have to include, in addition to the St. Louis rate, a reasonable charge for the additional service performed by the Manufacturers Railway, the Commission considered evidence of the value of such service and stated that

> "we are of the opinion that the division of the joint rates accruing to the (Manufacturers) railway should not exceed $2 per car. However, we shall not by definite finding and order fix these divisions now. This is our original finding with respect to the establishment of joint rates, and the carriers, in accordance with the provisions of the act, will be given an opportunity to agree among themselves. If they cannot agree upon this basis the Commission will make such further investigation as may be necessary to make a definite finding and order in this respect."

After the rendition of this opinion by the Interstate

Commerce Commission on, to-wit, the 7th day of December, 1913, the Cotton Belt published and filed with the Interstate Commerce Commission, to become effective January 7, 1914, a tariff known as Supplement No. 5 to Local Tariff No. 6188 of St. Louis Southwestern Railway Company, I. C. C. No. 3219, which, amongst other things, provided that on all carload traffic originating at or destined to competitive points on its line of railroad or on the lines of railway of its connections and transported over its line of railway destined to or originating at warehouses, factories or industries located on the line of the Manufacturers Railway, it would absorb the switching charge of the latter company. That tariff was suspended by the Interstate Commerce Commission for a period of 120 days, presumably under authority of Section 15 of the Act to Regulate Commerce. Prior to the expiration of the 120-day period, the Interstate Commerce Commission again suspended said tariff for a further period of six months, although in the meantime no hearing as to the propriety of the provisions of said tariff had been begun by the Interstate Commerce Commission. It is this action of the Interstate Commerce Commission, and its action in finally ordering said tariff canceled, which give rise to the present litigation in so far as the Cotton Belt is concerned, that company taking the position that the Interstate Commerce Commission has no authority to suspend a tariff beyond a period of

120 days, unless within the 120 days a hearing had been begun by the Commission but could not be concluded within the 120 days, and that, no hearing having been accorded it as to the propriety of the provisions thereof, the various orders of the Interstate Commerce Commission were without lawful authority and void.

To restrain the enforcement of the orders of the Interstate Commerce Commission above referred to, and to have the same declared null and void, the appellants filed a petition for injunction in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, which appears on pages 3 to 9, inclusive, of the printed record. The Court having dismissed the bill of complaint (Printed Record, page 89), an appeal was prosecuted to this Court.

SPECIFICATIONS OF ERROR.

I.

The lower court erred in dismissing the bill of complaint and entering a final decree in favor of appellees.

II.

The lower court erred in not setting aside the order of the Interstate Commerce Commission of date April 20, 1915, suspending the tariff of St. Louis Southwestern Railway Company, known as I. C. C. No. 3219, for a period of six months, because the Interstate Commerce Commission was without lawful authority to make said order for the reason that no hearing with reference to the propriety of the provisions of said tariff was begun within the period of 120 days provided by law.

III.

The lower court erred in not setting aside the order of the Interstate Commerce Commission of date July 10, 1914, commanding St. Louis Southwestern Railway Company to cancel its said tariff, for the reason that no hearing with reference to the propriety of the provisions of said tariff was granted to said St. Louis Southwestern Railway Company as provided by law.

IV.

The lower court erred in not setting aside said order of the Interstate Commerce Commission on the ground that said Commission was without lawful authority to make said order until upon investigation and hearing it had first found that the payment of $4.50 per car, provided for in said tariff, was so excessive as to constitute a rebate.

BRIEF.

I.

The Interstate Commerce Commission was without authority to make its order of date April 20, 1914.

II.

The statute contemplates a full hearing.

I. C. C. v. Louisville & Nashville R. R. Co., 227 U. S. 87, 57 L. Ed. 431, 433;

Atlantic Coast Line R. Co. v. I. C. C., 194 Fed. 449, 457.

III.

The Interstate Commerce Commission was without lawful authority to issue its order of date July 10, 1914.

IV.

The issues in Case No. 3151 were not the same as in I. & S. No. 355, and the hearing in the former cannot be considered a hearing in the latter case.

V.

The Interstate Commerce Commission has not decided that an allowance or absorption of $4.50 is unreasonable.

ARGUMENT.

I.

COMMISSION WITHOUT AUTHORITY TO ISSUE SECOND SUSPENSION ORDER.

It is alleged in the petition for injunction filed in the lower court (Printed Record, pp. 3, 4) and admitted in the answers, that on or about the 5th day of February, 1913, appellant, Manufacturers Railway, issued, published and filed with the Interstate Commerce Commission, to become effective March 7, 1913, its "St. Louis-East St. Louis Terminal Lines Switching Tariff No. 1-F, I. C. C. No. 973", which provided for the assessment and collection by it of a switching rate of $4.50 per car for its service of transporting freight to or from industries located on its line of railway, within the City of St. Louis, to or from its connection with the St. Louis Transfer Railway Company; that in order to compete for traffic destined to or from industries located on the tracks of the Manufacturers Railway Company appellant, St. Louis Southwestern Railway Company (Cotton Belt) on or about the 7th day of December, 1913, published and filed with the Interstate Commerce Commission, to become effective January 7, 1914, a tariff known as Supplement No. 5 to Local Tariff No. 6188, I. C. C. No. 3219, which, amongst other

things, provided that on all carload traffic originating at competitive points on its line of railway or on the line of railway of its connections and transported over its line of railway destined to warehouses, factories or industries located on the line of railway of the Manufacturers Railway Company, within the City of St. Louis, and on all competitive traffic originating at warehouses, factories or industries located on the line of railway of the Manufacturers Railway Company and destined to points located on the line of railway of the St. Louis Southwestern Railway Company, or its connections, and transported over said line, the Cotton Belt would absorb the charges of the Manufacturers Railway Company for switching said traffic to or from the connection of the St. Louis Transfer Railway Company with the Manufacturers Railway Company from or to the warehouses, factories or industries located on the line of railway of the Manufacturers Railway Company. When the Cotton Belt tariff was filed with the Interstate Commerce Commission, the Commission issued an order suspending the operation thereof, which said order is in words and figures as follows:

"At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 19th day of December, A. D. 1913.

INVESTIGATION AND SUSPENSION DOCKET No. 355.

Absorption of Switching Charges at St. Louis, Mo.

"It appearing that there has been filed with the Interstate Commerce Commission by the Chicago, Peoria & St. Louis Railroad Company and the St. Louis Southwestern Railway Company, tariffs containing schedules stating new individual regulations and practices affecting rates and charges, to become effective the 7th day of January, 1914, designated as follows:

Chicago, Peoria & St. Louis Railroad Co.
Supplement No. 2 to I. C. C. No. 953.
St. Louis Southwestern Railway Co.
Supplement No. 5 to I. C. C. No. 3219.

It Is Ordered, That the Commission upon complaint, **without formal pleading,** enter upon a hearing concerning the propriety of the charges and the lawfulness of the regulations and practices stated in the schedules contained in said tariffs.

It Further Appearing, That said schedules make certain changes in rates for the interstate transportation of various commodities, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the schedule contained in said tariffs should be post-

poned pending said hearing and decision thereon:

It Is Further Ordered, That the operation of ALL schedules contained in said tariffs be suspended, and that the use of the regulations and practices therein stated be deferred upon interstate traffic until the 7th day of May, A. D. 1914, unless otherwise ordered by the Commission.

And It Is Further Ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the following carriers, viz:

CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY,

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

and that said carriers be, and they are hereby, made respondents to this proceeding, and that **they be duly notified of the time and place of the hearing above ordered.**

By the Commission.

(Signed) George B. McGinty,
Secretary."

No further action was taken by the Interstate Commerce Commission in connection with the hearing referred to in said order until on or about the 20th day of April, A. D. 1914, when a further suspension was ordered by an order in words and figures as follows, to-wit:

"At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 20th day of April, A. D. 1914.

INVESTIGATION AND SUSPENSION DOCKET No. 355.

Absorption of Switching Charges at St. Louis, Mo.

It Appearing, That by an order dated the 19th day of December, 1913, the Interstate Commerce Commission entered upon a hearing concerning the propriety of the new individual regulations and practices affecting rates and charges, stated in the schedules contained in tariffs, designated as follows:

Chicago, Peoria & St. Louis Railroad Co.
Supplement No. 2 to I. C. C. No. 953.
St. Louis Southwestern Railway Co.
Supplement No. 5 to I. C. C. No. 3219.

It Further Appearing, That pending such hearing and decision the Commission ordered that the operation of the schedules contained in said tariffs be suspended, and that the use of the regulations and practices, therein stated, be deferred upon interstate traffic until the 7th day of May, 1914, and,

It Further Appearing, That such hearing cannot be concluded within the period of suspension above stated,

It Is Ordered, That the operation of the sched-

ules contained in the tariffs above designated, be further suspended, and that the use of the regulations and practices therein stated be further deferred upon interstate traffic until the 7th day of November, 1914, unless otherwise ordered by the Commission.

It Is Further Ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission and that copies hereof be forthwith served upon the respondents to this proceeding.

By the Commission.

(Signed) George B. McGinty,
Secretary."

The only authority conferred by Congress upon the Interstate Commerce Commission to suspend a tariff filed by a railroad company is contained in Section 15 of the Act to Regulate Commerce, the pertinent portions of which are here quoted, to-wit:

"Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate * * * or any new individual or joint regulation or practice affecting any rate * * * the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a **hearing** concerning the propriety of such rate * * *

regulation or practice; and **pending such hearing** and the decision thereon **the Commission** * * * **may suspend the operation of such schedule** and defer the use of such rate * * * regulation or practice, **but not for a longer period than one hundred and twenty days** beyond the time when such rate * * * regulation or practice would otherwise go into effect; and after **full hearing,** whether completed before or after the rate * * * regulation or practice goes into effect, the Commission may make such order in reference to such rate * * * regulation or practice as would be proper in a proceeding initiated after the rate * * * regulation or practice had become effective; provided, that **if any such hearing cannot be concluded within the period of suspension as above stated,** the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months, * * * and the **Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.**"

The object of this section of the statute is clear—to do justice to both shippers and carriers. Under other provisions of the Act to Regulate Commerce a shipper is given the right to appeal to the Interstate Commerce Commission for redress and reparation if the tariffs of the carriers provide for the assessment and collection of unreasonable rates or provide regulations or practices which unreasonably affect any

rate. Congress, however, no doubt realized that to in all cases compel the shipper to comply with the tariff provisions and then institute litigation to determine his rights, might work inconvenience and possibly hardship on the shippers and result in a multiplicity of litigation. It, therefore, provided that the Commission may suspend the operation of any tariff complained of or which in the judgment of the Commission should not be permitted to become effective, until it has conducted a hearing with reference thereto and determined the propriety of the rate, regulation or practice in question.

Congress also probably realized, on the other hand, that when a tariff is suspended by the Interstate Commerce Commission and the rates, regulations or practices therein contained are subsequently found by the Commission to have been proper, the carriers have no remedy by which they can recover the charges thus found to be reasonable, on shipments moving in the interim. Congress, therefore, provided that the Commission give to the hearing and decision of such questions **preference over all other questions**, and decide the same **as speedily as possible.** In order to insure a speedy hearing and determination of such questions, it provided that the Commission may enter upon such hearing **at once**, but upon reasonable notice, and **without answer or other formal pleading** by the interested

carrier or carriers, and limited the right of the Commission to suspend such tariff to a period not longer

> "than 120 days beyond the time when such rate * * * regulation or practice would otherwise go into effect";

realizing, however, the possibility that such hearing might not be completed within 120 days, Congress very wisely provided

> "that if any such hearing cannot be **concluded** within the period of"

120 days

> "the Interstate Commerce Commission may, in its discretion, extend the time of the suspension for a further period not exceeding six months."

The language of the statute cannot be construed to mean that the Commission has the right to issue an order suspending a tariff and then take its own time about conducting a hearing, and if it does not suit the Commission's convenience to hold a hearing within 120 days, to further suspend the tariff for a period of six months. The statute charges the Commission with the duty of conducting the hearing **as speedily as possible** and giving to such hearing and the decision of the questions involved **preference over all other questions pending before it.** To insure a speedy hearing and decision the power of the Commission to suspend

a tariff is limited to 120 days. While the proviso does authorize the Commission to extend the time of suspension for a further period of six months if the hearing cannot be concluded within the period of 120 days, this proviso must be read in connection with those provisions of the statute requiring a speedy hearing and decision, and limiting the right of the Commission to extend the period of suspension to cases where a hearing has been begun and, notwithstanding it has been conducted with all possible speed, could not be finished within the 120 days.

II.

THE STATUTE CONTEMPLATES A FULL HEARING.

That the mere entry of an order for a hearing is not a "hearing" within the meaning of the statute is also clear from the language of the statute itself. The statute provides for a **full hearing**, and the right of the Commission to suspend a tariff beyond the period of 120 days is conditioned upon the inability to conclude **such hearing** —meaning a **full hearing**—within the period of 120 days. A **full hearing** contemplates that all parties be fully apprised of the evidence to be submitted or to be considered and be given opportu-

nity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal.

I. C. C. v. Louisville & Nashville R. R. Co., 227 U. S. 87, 57 L. Ed. 431, 433;
Atlantic Coast Line R. Co. v. I. C. C., 194 Fed. 449, 457.

The Commission, in issuing its first suspension order, apparently recognized that the carriers were entitled to a hearing respecting the propriety and legality of their tariffs, for it ordered

> "that said carriers be, and they are hereby, made respondents to this proceeding, **and that they be duly notified of the time and place of the hearing above ordered.**"

No notice "of the time and place of the hearing" ordered was ever given to the appellants and no hearing has in fact been had or begun at any time since the issuance of said first suspension order, nor at any time prior or subsequent to said second suspension order.

No hearing having been had or begun within the first period of suspension, to-wit, within 120 days from the date of the original suspension order, the Commission was without authority in law to further suspend said tariff, and its order of date April 20, 1914, is null and void and should be set aside.

III.

COMMISSION WITHOUT AUTHORITY TO ISSUE ITS FINAL ORDER.

On July 10, 1914, the Interstate Commerce Commission rendered its final opinion and order in Docket No. 3151, referred to in the statement in this brief, and at the same time entered an order in this proceeding in words and figures as follows, to-wit:

"INVESTIGATION AND SUSPENSION DOCKET NO. 355.

Absorption of Switching Charges at St. Louis, Mo.

It Appearing, That on December 19, 1913, the Commission entered upon an investigation concerning the lawfulness and propriety of the rates, charges, regulations and practices stated in the schedules designated as follows:

Chicago, Peoria & St. Louis Railroad Co.
Supplement No. 2 to I. C. C. No. 953.
St. Louis Southwestern Railway Co.
Supplement No. 5 to I. C. C. No. 3219,

and subsequently ordered that the operation of said schedules contained in said tariffs be suspended until November 7, 1914;

It Further Appearing, That a full investigation

of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It Is Ordered, That the carriers respondent herein and designated in said tariffs be, and they are hereby notified and required to cancel, on or before November 7, 1914, the rates, charges, regulations and practices stated in the schedules specified in said orders of suspension.

By the Commission.

(Signed) George B. McGinty,
Secretary."

As has heretofore been stated, no notice "of the time and place of the hearing" of the proceeding known as Investigation and Suspension Docket No. 355 was ever given to appellants, nor was any hearing at any time had of the questions involved therein either before or after the date of the first and second suspension orders of the Commission (unless the hearing in Docket No. 3151 can be considered such—of which hereafter), and, therefore, the order of the Commission of date July 10, 1914, requiring the cancellation of said Cotton Belt tariff was made without authority of law and must be set aside.

IV.

ISSUES IN CASE NO. 3151 NOT SAME AS IN I. & S. NO. 355 AND HEARING IN FORMER CANNOT BE CONSIDERED HEARING IN LATTER CASE.

Appellees contend that what is known as I. & S. Docket No. 355 is a part of the case of Manufacturers Railway Company v. St. Louis, Iron Mountain & Southern Railway Company *et al.*, I. C. C. Docket No. 3151; that inasmuch as appellants in this case were parties to that case, the appellants in this case are bound by the evidence offered and the conclusions of the Commission in that case.

Waiving, for the sake of argument, the question whether or not the Interstate Commerce Commission has the right, without a formal consolidation of the two cases, to consider them as one, let us consider the issues and the conclusions of the Commission in I. C. C. Docket No. 3151.

As appears from the first opinion of the Commission in that case (21 I. C. C. 304), prior to March 1, 1910, the defendant carriers in that case were doing exactly what appellant, St. Louis Southwestern Railway Company, attempted to do by its tariff in question in this case—that is, were absorbing out of the through rate the switching charge of appellant, Manufacturers Rail-

way Company. The carriers notified appellant Manufacturers Railway Company that on and after March 1, 1910, they would no longer make an allowance to or absorb the switching charge of the Manufacturers Railway Company, and the Manufacturers Railway Company thereupon appealed to the Interstate Commerce Commission for relief. In its first opinion in that case, of date June 21, 1910, the Commission outlines the issues in that case in the following language:

> "There is presented for consideration and determination, first, the legality on the part of defendant carriers in making an allowance out of their rates to the Manufacturers Railway Company for its services as a terminal carrier, and the character of those services; second, the propriety of requiring any charge from the public served by the Manufacturers Railway in addition to the St. Louis rates; and, third, should such allowances be legal, what amounts would be reasonable charges for such services."

The first question was answered by the Commission on page 313 of its opinion, in the following language:

> "In view of all the facts, circumstances and conditions bearing upon this question, we have no doubt that the Manufacturers Railway Company is in fact a common carrier at common law, notwithstanding any modification thereof, and therefore within the provision of the first section

of the Act to Regulate Commerce, and that the payment to it of a reasonable and just portion of the St. Louis rates for the terminal service rendered by it is not unlawful."

Answering the second question the Commission, on pages 314 and 315 of its opinion, says:

"On the whole record we are of the opinion and find that the action of defendants in cancelling the said divisions and absorptions, which have been for many years included in the St. Louis rates, has subjected complainant shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges and to undue discrimination and disadvantage. This has been accomplished by canceling what were in effect joint rates or charges and leaving in effect what are found to be unjust, unreasonable and discriminatory charges."

Answering the third question the Commission said, on page 316 of its opinion:

"The record before us does not present a sufficient basis for a satisfactory determination of the question as to the reasonable and just division or allowance to the complainant carrier."

During the pendency of that proceeding the trunk lines had again filed tariffs providing for the absorp-

tion of the switching charges of the Manufacturers Railway, which tariffs had been suspended by the Interstate Commerce Commission, and the Commission in rendering its decision, said:

> "An order canceling these suspensions will be entered effective July 15, 1911."

From this opinion it would appear that the issues in that case and the issues presented in I. & S. No. 355 were identical, and that the Commission had sustained the legality of the practice of the trunk lines in absorbing the switching charges of the Manufacturers Railway and found that the record did not contain sufficient evidence from which it could determine whether the divisions or allowances made by the tariffs on file were reasonable and just.

But, upon rehearing, the Commission held (28 I. C. C. 93) that the proceeding was not one involving the right or the duty of a trunk line to absorb the switching charges of the Manufacturers Railway, but, on the contrary, was one for the establishment of through routes and joint rates, the Commission saying, on pages 100 and 101:

> "Apparently the theory upon which this complaint is brought is that the cancellation of these allowances to the (Manufacturers') Railway was in effect the cancellation of joint rates between the trunk lines and the railway, the effect of

which, as alleged in the petition, results 'to the great loss and damage of said complainants and others similarly situated, and that such action constitutes an unjust and unlawful discrimination * * * contrary to and in violation of the terms and provisions of Section 3 of said Act to Regulate Commerce'. The prayer of the petition is that 'an order be made commanding the defendants, and each of them, to establish or re-establish, through routes and through or joint rates over their lines and the lines of the complainant, Manufacturers Railway Company, as the same existed prior to the first day of March, 1910, * * *.

"There is evidently much confusion in the minds of complainants as to the true character of these allowances and the services for which rendered. Sometimes, for competitive or other reasons, the trunk line will absorb the charge of a connecting terminal line for gathering freight originating on the latter to the rails of the trunk lines. Manifestly such service of the terminal line is one performed for the trunk line, and not for the shipper, and should be paid for by the trunk line and not by the shipper. **While the trunk line may thus make such absorptions voluntarily**, we have not had cited to us, and are not ourselves familiar with, any principle of law under which the Commission could compel the trunk lines thus to bear, not only the expense of the service of a connecting terminal line, but the reasonable profit in addition, which presumably will be included in the terminal carriers' rate * * * ".

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And on page 103:

"We are not to be understood as saying that when carriers in the through route under their tariffs absorb the switching charge of a terminal line, the resulting rates are not to all intents and purposes, and, in fact, joint rates so far as concerns the shipping public, but what we do say is that while **the trunk lines may thus voluntarily establish such rates on that basis**, we would not be justified in requiring them to do so.

"There is, therefore, we think, in legal effect a well-defined distinction between an absorption which may be made by a trunk line voluntarily and the division of the joint rate which may by lawful order be prescribed by this Commission. This being so, it follows that there is also in legal contemplation a well-defined distinction between the character of the services rendered by the railway under the absorption tariffs of the trunk lines formerly in effect and the same services under the joint rate which could by lawful order be prescribed by this Commission. In the absence of an undue discrimination with respect to such absorptions the Commission could make no lawful order that they be made, and its order even in the case of such discrimination would probably be in the alternative to absorb the charge of the railway or to cease absorbing similar terminal charges under like conditions. If there is shown no such discrimination the only question left for the Commission to consider is the establishment of a joint rate between the railway and the trunk lines, and,

assuming the rate of the latter to be reasonable in itself, such joint rate must necessarily be higher than the rate by the amount of the through charge accruing to the railway."

After thus eliminating the question of absorptions the Commission outlines the issues as follows:

"Therefore, in the final analysis there are before the Commission in this case two questions: (1) Whether there is an undue discrimination against the shippers on the railway by reason of the absorption by the trunk lines of the charges of other terminal carriers in St. Louis under like conditions, and (2), if there is no such discrimination, should the Commission establish joint rates, and, if so, upon what basis?"

The Commission then finds (page 105 of its opinion):

"That the payments formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered to the trunk lines and were in no sense divisions of joint rates as for services rendered for the shippers served by the railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad

Association of St. Louis and in refusing to bear the expense of similar delivery by the railway upon the rails of that carrier are not subjecting the shippers located on and served by the railway to undue prejudice and disadvantage; that, therefore, the only lawful order the Commission can make is in the establishment of joint rates if the conditions are such as to warrant that action; that under joint rates so prescribed that part of the service performed by the railway would be in contemplation of the act a service performed for the shipper to be paid for by the shipper and could not be construed by the Commission to be a service rendered for the trunk lines, the expense of which could be required by the Commission's order to be borne by the trunk lines; that the rates of the trunk lines not being shown to be unreasonable in themselves, such joint rates with the railway must therefore necessarily be in excess of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis."

In explanation of its decision the Commission again (pp. 108, 109) emphasizes the fact that the proceeding under consideration **was not one**

> "**in which the trunk lines are willing to make absorptions or divisions out of their own rates** and the only duty of the Commission is to see to it that such payments by the trunk lines are not overdone and in effect rebates to the industry

through the railway * * *. It is, on the contrary, one in which the trunk lines are, on this record at least, resisting the demands of a connecting common carrier and its shippers for an order that would materially diminish their revenues and in which the Commission is asked to make an affirmative order which would have that effect. It is manifest that we cannot consistently or lawfully do this. What the trunk lines did for years voluntarily in the matter of absorptions affords no basis for our order in continuance of the practice, if they could not have been required by our order to make such absorptions originally. Neither can the fact of their previous voluntary absorptions change the true character of the present proceeding, either in those allegations of the petition which deal with the establishment of joint rates, or under the previous act relating thereto, by which particular provisions alone we have jurisdiction to make any order in the case."

Again, on page 110, the Commission says:

"As heretofore shown, the prayer of the petition is for the establishment or re-establishment of 'through routes and through or joint rates as the same existed prior to March 1, 1910,' which means the establishment or re-establishment of the St. Louis rate with the previous absorptions. It is apparent from the foregoing findings that the prayer of the petition cannot be upheld to that extent * * *. We have, in other words, dealt with this case as presented by the pleadings and

at the hearings, upon the understanding that the trunk lines are resisting the demands of the railway and its shippers and in accordance with what we conceive to be our duty and limitations in the making of joint rates by affirmative order. That order, if made, would merely prescribe the maximum rate."

It thus clearly appears that in writing its first opinion the Commission, as well as the complainant in that case, misconceived the nature of the complaint as well as the jurisdiction of the Commission. Although the complaint asks for the establishment of through routes and joint rates the complainant and the Commission assumed that the Commission could compel the trunk lines to absorb out of their St. Louis rates whatever switching charge might be necessary to enable shippers located on the line of the Manufacturers Railway Company to secure delivery of their freight at the St. Louis rate, and the Commission therefore ordered the carriers to reinstate their former tariffs providing for such absorption. When the case was reconsidered by the Commission it saw the error into which both it and the complainant had fallen. It therefore held that if the proceeding was one to compel the trunk lines to absorb the charges of the Manufacturers Railway Company the Commission was without jurisdiction unless by reason of the fact that the trunk lines failed to absorb the charges of the Manufacturers Rail-

way Company, while at the same time absorbing the charges of other terminal lines, the trunk lines were guilty of discrimination and that it was of opinion that no such discrimination existed. It further held that the petition in that case could not be construed to be one to compel the trunk lines to absorb the charges of the Manufacturers Railway, but that it was one asking for the establishment of through routes and joint rates; that inasmuch as it had not been shown that the St. Louis rate was unreasonably high the Commission must assume that that rate was reasonable and must necessarily, in fixing the volume of the through rate, make it some figure in excess of the St. Louis rate. To make its position clearer the Commission expressly stated that the proceeding was not one in which was brought into question the legality of the amount of the allowance made to the Manufacturers Railway Company by the trunk lines, in the form of an absorption.

As is clearly stated by the Commission in its third opinion (32 I. C. C. 100), that opinion was written in response to the request by the Manufacturers Railway Company for a reargument of the case. No rehearing was had and no additional evidence was submitted.

So that at the time the tariff of the St. Louis Southwestern Railway Company was filed with the Commission, the Commission had held that a trunk line might, if it saw fit, voluntarily absorb the switching charge of the Manufacturers Railway Company, but that the

Commission could not require it to do so; that the proceeding before it was one praying for the establishment of through routes and joint rates and was not one

> "in which the trunk lines are willing to make absorptions or divisions out of their own rates, and the only duty of the Commission is to see to it that such payments by the trunk lines are not overdone and in effect rebates to the industry through the railway"

and that under the pleadings—

> "The only lawful order the Commission can make is in the establishment of joint rates if the conditions are such as to warrant that action."

The Commission having itself held that Case No. 3151 was not one in which the carriers were attempting to voluntarily absorb the switching charges of the Manufacturers Railway Company, in which event the only question for determination by the Commission would be whether the amount of the absorption was such as to be in effect a rebate, it cannot now successfully contend that the hearing of the issues in Docket No. 3151 constituted a hearing of the issues in I. & S. No. 355, and no hearing having been had in I. & S. No. 355, the various orders of the Commission must be set aside.

While there are some expressions in the second opinion of the Interstate Commerce Commission which might be construed to mean that in the opinion of the Commission the trunk lines could not extend the St. Louis rate to points or industries on the line of the Manufacturers Railway Company and absorb the switching charges of the latter, the Commission, in its third opinion (32 I. C. C. 100), expressly disclaims any intention to so hold. On page 102 of its third opinion the Commission, in referring to its second opinion, said:

> "We further held that while we thus could not require the trunk lines to participate with the complainant (Manufacturers) railway in joint rates which would not be higher than their rates to St. Louis, they might voluntarily participate in joint rates on that basis, provided that in the final division of the through charge received from the shipper they did not pay to the complainant railway for its service more than was just and reasonable, and did not thereby in the amount of the excess indirectly refund to the Brewing Association a part of the through transportation charges paid to them by the Brewing Association."

And on page 103, said:

> "We did not by anything there said condemn the voluntary payment by the trunk lines to the complainant (Manufacturers) railway of reasonable allowances or divisions; nor did we disapprove of the trunk lines participating with the complain-

ant (Manufacturers) railway in the establishment and maintenance of joint rates not higher than their rates to and from St. Louis, provided the division thereof received by the complainant (Manufacturers) railway in final settlement with them was not excessive."

Therefore, upon the filing of the Cotton Belt tariff with the Commission and its suspension by the Commission it was incumbent upon the Commission to at once begin a hearing on the sole question whether the allowance or absorption of $4.50 per car was excessive, and, as that question was not involved nor decided in Docket No. 3151, the hearing conducted in the latter case cannot properly be said to have constituted a hearing in I. & S. No. 355.

V.

THE COMMISSION HAS NOT DECIDED THAT AN ALLOWANCE OF $4.50 IS UNREASONABLE.

As has been set forth in the statement in this case, the Manufacturers Railway Company published and filed with the Interstate Commerce Commission a tariff providing for a switching charge of $4.50 per car; the Cotton Belt published a tariff providing that it would absorb said switching charge of the Manufacturers Railway Company on shipments moving to and from industries located on the line of the Manufacturers

Railway Company. Appellees contend that the Commission has already determined that such an allowance or absorption is unreasonable and so excessive as to constitute in effect a rebate.

As has heretofore been stated, the Interstate Commerce Commission, in its first opinion, said (21 I. C. C. 316):

> "The record before us does not present a sufficient basis for a satisfactory determination of the question as to the reasonable and just division or allowance to the complainant carrier,"

Manufacturers Railway Company; and on page 315 of its opinion, said that an order canceling the suspensions of the absorption tariffs which had been filed, would

> "be entered effective July 15, 1911."

It is true, in its second opinion the Commission (28 I. C. C. 106) said:

> "We are of the opinion that the division of the joint rates accruing to the (Manufacturers) railway should not exceed $2 per car";

but it added:

> "We shall not by definite finding and order fix these divisions now. This is our original finding with respect to the establishment of joint rates, and

> the carriers, in accordance with the provisions of the act, will be given an opportunity to agree among themselves. If they cannot agree upon this basis the Commission will make such further investigation as may be necessary to make a definite finding and order in this respect;"

thus indicating that it had not reached a definite conclusion as to the maximum amount which the trunk lines could absorb without violating the provisions of the law prohibiting the payment of rebates.

It is true that in the last paragraph of its opinion, appearing on page 111, it did say that:

> "We regard the present allowances, which, as stated, average slightly above $4.50 per car, as effecting unlawful results;"

but if, as the Commission has said, that proceeding did not involve the payment or absorption by the trunk lines of the switching charges of the Manufacturers Railway Company, certainly the mere statement by the Commission that it **regards** the **present** allowances, which average slightly **above** $4.50 per car, as affecting unlawful results, is not tantamount to a **finding** by that body that the payment of **$4.50** per car would effect unlawful results.

In determining whether or not a rate is reasonable the Commission has frequently held that:

> "There is a considerable zone within which a

rate may be held to be just and reasonable, and we are not inclined in this case to hold the carrier down to the minimum which would be permitted by the record."

I. & S. Docket No. 26, Etc., 22. I. C. C. 604, 625.

That principle is equally applicable here—an allowance or absorption slightly **above** $4.50 might be unreasonable, while an allowance or absorption of $4.50 per car would not be.

That this principle was applied by the Commission itself in Case No. 3151 clearly appears from the opinions of the Commission in that case. While in its second opinion it said that (page 106):

"We are of the opinion that the divisions of the joint rates accruing to the railway should not exceed $2.00 per car;"

in its third opinion it said (page 103):

"In our supplemental report we expressed the opinion that from the evidence before us a reasonable division to the complainant railway out of any joint rate which might be established between it and its trunk line connections would be perhaps not to exceed $2.00 a car. Upon further consideration we express the view that, subject to any necessary modification thereof, upon further hearing with respect to divisions, if the necessity for such further hearing shall later arise, the division

accruing to the complainant railway should not exceed $2.50 a car."

Proceeding, the Commission says that it will enter an order which

> "will require the establishment and maintenance by complainant railway and its trunk line connections defendant herein of maximum joint rates to and from points on the complainant railway which shall not exceed in amount the trunk lines' rates to and from St. Louis by more than $2.50 a car. Then, whether the carriers in the through route establish rates on that maximum basis, or, through the voluntary agreement of the trunk lines, on a basis not higher than their St. Louis rates, upon failure of the trunk lines and the complainant railway to agree upon the proper basis of division thereof, and upon request to us so to do, we shall fix the divisions, upon further investigation, as provided in the act. **If that inquiry shall confirm our present impression that $2.50 a car is a reasonable division** to the complainant railway, **we shall grant it that amount.** If, on the other hand, we **shall be convinced by the evidence that $2.50 a car is too much, or not enough, we shall fix the amount accordingly.**"

Thus, while the Commission in its second decision says that in its opinion $2.00 per car would be a reasonable charge for the service of the Manufacturers Railway Company, in its third opinion the Commission

authorizes the carriers to extend the St. Louis rate to points on the line of railway of the Manufacturers Railway Company and pay it a division out of the St. Louis rate (which the Commission itself admits is in effect the same as an absorption) of $2.50 per car, thus holding that $2.50 per car would not be unreasonable and that it may find even a greater sum to be not unreasonable.

The weakness of the position taken by appellees that the Commission has found that an allowance of $4.50 is excessive, is clearly shown by these excerpts from the opinions of the Commission. The Commission admits that it erred in first stating that $2.00 was sufficient compensation for the service rendered by the Manufacturers Railway; it then fixes the amount at $2.50 and impliedly admits that it is not certain that that amount is sufficient, by saying that if on hearing with reference to the question of divisions it

> "shall be convinced by the evidence that $2.50 a car is too much, or not enough, we shall fix the amount accordingly."

The fact is that the Commission has made no finding that the payment by the St. Louis Southwestern Railway Company out of the St. Louis rate, to the Manufacturers Railway Company of the sum of $4.50 for the switching service of the latter road provided for in its tariff, is so excessive as to constitute a rebate. Never-

theless the Commission has arbitrarily attempted to cancel the tariff of the St. Louis Southwestern Railway Company providing for such payment.

IN CONCLUSION.

We respectfully submit that I. & S. Docket No. 355 cannot be considered a part of I. C. C. Docket No. 3151; that no hearing on the question of the propriety or legality of the rates, fares, charges, regulations or practices contained in the tariff of the St. Louis Southwestern Railway Company was begun prior to the expiration of one hundred and twenty days after the suspension thereof and that the Commission therefore had no authority to enter the order of date April 20, 1914; that the St. Louis Southwestern Railway Company has been accorded no hearing whatever on the question of the propriety or legality of the rates, fares, charges, regulations or practices contained in its aforesaid tariff, as provided by the Act to Regulate Commerce; that the Commission has not found that the absorption by the St. Louis Southwestern Railway Company of the $4.50 switching charge of the Manufacturers Railway Company is or would be so excessive as to constitute a rebate; that therefore the orders of the Interstate Commerce Commission of date April

20, 1914, and July 10, 1914, are null and void and should be set aside and the enforcement thereof enjoined.

Respectfully submitted,

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St. Louis Southwestern Railway Co.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1917.

MANUFACTURERS' RAILWAY COMPANY, and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

Appellants,

v.

UNITED STATES OF AMERICA, Appellee, and INTERSTATE COMMERCE COMMISSION,

Intervening Appellee.

No. [illegible]

Appeal from the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

BRIEF FOR THE APPELLANT, MANUFACTURERS' RAILWAY COMPANY.

SIDNEY F. ANDREWS,
Solicitor for Appellant,
Manufacturers' Railway Company.

[illegible]

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1916.

MANUFACTURERS' RAILWAY COMPANY, and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Appellants,
v.
UNITED STATES OF AMERICA, Appellee, and INTERSTATE COMMERCE COMMISSION, Intervening Appellee.
No. 142.

Appeal from the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

BRIEF ON BEHALF OF APPELLANT, MANUFACTURERS' RAILWAY COMPANY.

STATEMENT.

This is an appeal from a final decree dismissing a bill filed by the appellants seeking to enjoin the enforcement of an order of the Interstate Commerce Commission. Said decree was concurred in by the

Honorable Elmer B. Adams, circuit judge, and the Honorable David P. Dyer, district judge, the Honorable Walter H. Sanborn, circuit judge, dissenting. No opinion accompanied the order of dismissal (R., p. 89-91).

History and Description of the Manufacturers' Railway.

Situated in south St. Louis, within the limits of the city of St. Louis, are the great industrial plants of the Anheuser-Busch Brewing Association, a corporation. In south St. Louis, with an occasional exception, beginning at the Mississippi river the streets paralleling the river are numbered consecutively. What was formerly First street forms the eastern boundary of the lots and blocks of land belonging to the Brewing Association, on which its various buildings are located. Said plant area is bounded on the west by Thirteenth street, on the north by Lynch street, and on the south by Utah street. This area is intersected by numerous streets and alleys used by the public. The principal part of the Anheuser-Busch plant is located back from the river on the higher ground in the vicinity of Thirteenth street.

In 1887 Mr. Adolphus Busch, deceased, owner of a controlling stock interest in said Brewing Association, in order to more readily and economically ship the products of said brewery to the various markets, and in order to receive from the many points of origin the various commodities used in the manufacture of said products, caused to be organized under the laws of Missouri the Manufacturers' Railway Company (here-

inafter referred to as the "Railway"), retaining a controlling interest in said corporation.

After obtaining the necessary ordinances for the crossing of certain public streets and alleys, the railway was constructed from the main brewing plant, at Ninth street, eastwardly to First street, there connecting with the tracks of the St. Louis, Iron Mountain and Southern Railway Company (hereinafter referred to as the Iron Mountain Company). When thus completed said road was leased for ten (10) years to the Iron Mountain Company, and upon the expiration of said term said lease was renewed for a further period of ten years.

Prior to the expiration of the last lease, viz.: April 17, 1908, it was determined to enlarge the scope of the operations of said Railway, which had been constantly increasing its trackage and assuming more and more of the duties of a public carrier during the pendency of the leases. The plan adopted was to largely increase the facilities of the Railway in St. Louis, and also to extend the railway across the Mississippi river and connect in Illinois with the lines diverging at East St. Louis. With this object in view, a renewal of the above leases was refused and the operation of the railway was taken over by the Railway Company (R., pp. 539-542). Thereafter various additional ordinances were secured for the laying of tracks along and across numerous streets of the city and for crossing the river with a car ferry, and large sums of money invested in real estate, and additional yards and tracks for the use of the public were constructed and a main track built northwardly along Second street for a distance of 2.214 miles, with various industrial spur tracks

leading therefrom. The car ferry has not been established (R., p. 480). During the existence of said leases, the only connection of the Railway was with the tracks of the Iron Mountain Company, but, in furtherance of the above plan, an expensive viaduct was constructed across the Iron Mountain Company's tracks in order also to afford a connection with the St. Louis Transfer Railway. Said Transfer Railway is a subsidiary corporation owned by the Wiggins Ferry Company, which latter corporation is controlled by the Terminal Railroad Association of St. Louis. Said St. Louis Transfer Railway constitutes the railway terminal connection of said Ferry Company on the St. Louis side of the Mississippi river (R., p. 485). U. S. v. Terminal Railroad Association, 224 U. S. 383). Said Transfer Railway extends south along the west bank of the river parallel with the Iron Mountain to a connection with the Railway, and through the Transfer Railway connection was obtained with all lines entering St. Louis and East St. Louis.

Between what was formerly First street and the outer wharf line of the river are located the main line of the Iron Mountain Company; also the tracks of the St. Louis Transfer Railway, and many tracks of complainant, the Manufacturers' Railway Company, each system of tracks paralleling the other. The land between the outer wharf line and the tracks of the St. Louis Transfer Railway was formerly owned by the Brewing Association but is now owned by the Railway. On this strip of land the Railway has constructed, and now uses for transportation purposes, two miles of tracks, representing two-fifths of what is referred to in this case as its River Yards; the remainder of said yards extends northwardly occupying the wharf,

which the Railway has leased from the City of St. Louis. All of what was at one time First street is now occupied by the tracks, main line and switches, of the Iron Mountain Company and immediately west of said tracks are other tracks and yards of the Railway paralleling those of the Iron Mountain and diverging westwardly therefrom (R., pp. 476-486).

Since the expiration of the lease of the Iron Mountain, the Railway has been operating its enlarged system of terminal railroad facilities as a common carrier of freight moving in interstate commerce to and from points on its line, and performing its service of terminal transportation in connection with other carriers rendering the line haul or additional terminal services. It serves a considerable public in South St. Louis, in addition to the Brewing Association (R., pp. 486-487).

St. Louis Southwestern Railway Company.

The St. Louis Southwestern Railway Company (hereinafter called the "Cotton Belt") is a railroad corporation organized and existing under the laws of Missouri. It does not reach St. Louis with its own rails, but has trackage rights to East St. Louis over the rails of the Iron Mountain Railroad on the east side of the Mississippi river.

Having no terminals or rails of its own on the west side of the river, the Cotton Belt, in order to serve the St. Louis public and the industries within that city, depends wholly upon the terminal facilities of the Terminal Railroad Association of St. Louis and *the respective terminal facilities of the various carriers within that city.* On all of its traffic to and from St. Louis it must pay one or more switching charges. Should the

traffic originate or be destined to an industry on the Terminal Railroad Association's lines within the city, it must pay the charges of that company for its terminal services, and if the industry, for example, be located on the terminal tracks of the Wabash or of the Iron Mountain in St. Louis, the charges for terminal services rendered by either of these carriers must be paid in addition to the charges of the Terminal Association.

Since the Railway has direct connection with only two roads, viz.: the Iron Mountain and the St. Louis Transfer Railway, the Cotton Belt in order to serve the industries on the lines of the Railway must use either the terminal facilities of the said Terminal Association via the St. Louis Transfer Railway, or the terminal facilities of the Terminal Association in connection with the terminal facilities of the Iron Mountain (R., p. 16). In the former instance, the Cotton Belt would only have two switching charges to absorb and pay, viz.: those of the Terminal Association (*i. e.*, St. Louis Transfer Railway), and those of the Railway; whereas, in the latter case it would have three switching charges to absorb, or pay, viz.: those of the Terminal Association, and those of the Iron Mountain, and those of the Railway.

It being the practice of the Cotton Belt to absorb into its line haul rate, on competitive carload traffic originating at or destined to industries within the City of St. Louis, all switching or terminal charges thereon made by the various carriers in that city, so that shippers therein served by it paid only the common, or flat, St. Louis rates, and being desirous of serving the industries and shippers within St. Louis located on the

line of the Railway upon the same terms and conditions as it applied to the shippers and industries aforesaid, did, on or about December 7, 1913, publish and file with the Interstate Commerce Commission its tariff for the purpose aforesaid, which tariff was to become effective January 7, 1914. The Railway's published rate for switching carload freight to or from industries on its road to or from its connection with the Iron Mountain or with the St. Louis Transfer Railway (via which lines, as heretofore explained, such traffic for the Cotton Belt had to be handled) was $4.50 per car. (Leland's tariff, I. C. C. No. 1034).

The said tariff of the Cotton Belt filed as aforesaid, among other things, provided for the absorption of said switching charge of the Railway, i. e., it agreed to pay to the Railway from out of the line haul rate the tariff rate of the Railway, viz.: $4.50 per car on certain competitive carload traffic originating at and destined to points on the line of the Railway; thus applying the St. Louis common, or flat rate, to shippers and industries on the line of the Railway (R., pp. 290-295).

Tariff Suspended for One Hundred and Twenty Days:

Before the effective date of said tariff the Interstate Commerce Commission suspended the operation of the same for a period of four months, or one hundred and twenty days, by the issuance of the following order:

"Investigation and Suspension Docket
No. 355
Absorption of Switching Charges
at St. Louis, Mo.

It Appearing, That there has been filed with the Interstate Commerce Commission by the Chicago,

Peoria & St. Louis Railroad Company and the St. Louis Southwestern Railway Company, tariffs containing schedules stating new individual regulations and practices affecting rates and charges, to become effective the 7th day of January, 1914, designated as follows:

CHICAGO, PEORIA & ST. LOUIS RAILROAD CO.
Supplement No. 2 to I. C. C. No. 953.
ST. LOUIS SOUTHWESTERN RAILWAY CO.
Supplement No. 5 to I. C. C. No. 3219

It is ordered that the Commission upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the charges and the lawfulness of the regulations and practices stated in the schedules contained in said tariffs.

It Further Appearing, That said schedules make certain changes in rates for the interstate transportation of various commodities, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of schedules contained in said tariffs should be postponed pending said hearing and decision thereon:

It Is Further Ordered, That the operation of *all* schedules contained in said tariffs be suspended, and that the use of the regulations and practices therein stated be deferred upon interstate traffic until the 7th day of May, A. D., 1914, unless otherwise ordered by the Commission.

And It Is Further Ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the following carriers, viz.:

CHICAGO, PEORIA & ST. LOUIS RAILROAD CO.
ST. LOUIS SOUTHWESTERN RAILWAY CO.

and that said carriers be, and they *are hereby made respondents to this proceeding, and that they be*

duly notified of the time and place of the hearing above ordered (italics ours).

By the Commission.

(Signed) GEORGE B. McGINTY,
Secretary."

Tariff Further Suspended for Six Months.

Prior to the expiration of this order of suspension the Commission, on the 20th day of April, 1914, entered and served on the Cotton Belt a second order further suspending the effectiveness of said tariff for an additional period of six months from the said 7th day of May or until the 7th day of November, 1914. Said second order of suspension being as follows:

"INVESTIGATION AND SUSPENSION OF DOCKET No. 355.

ABSORPTION OF SWITCHING CHARGES AT ST. LOUIS, MO.

It Appearing, That by an order dated the 19th day of December, 1913, the Interstate Commerce Commission entered upon a hearing concerning the propriety of the new individual regulations and practices affecting rates and charges, stated in the schedules contained in tariffs, designated as follows:

CHICAGO, PEORIA & ST. LOUIS RAILROAD CO.
Supplement No. 2 to I. C. C. No. 953.
ST. LOUIS SOUTHWESTERN RAILWAY CO.
Supplement No. 5 to I. C. C. No. 3219

It Further Appearing, that *pending such hearing* and decision the Commission ordered that the operation of the schedules contained in said tariffs be suspended, and that the use of the regulations and practices, therein stated, be deferred upon interstate traffic until the 7th day of May, 1914, and,

It Further Appearing, that *such hearing cannot*

be concluded within the period of suspension above stated.

It is Ordered, That the operation of the schedules contained in the tariffs above designated, be further suspended, and that the use of the regulations and practices therein stated be further deferred upon interstate traffic until the 7th day of November, 1914, unless otherwise ordered by the Commission.

It Is Further Ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission and that copies hereof be forthwith served upon the respondents to this proceeding. (Italics ours.)

By the Commission.

(Signed) GEORGE B. McGINTY,
Secretary."

Tariff Ordered Cancelled:

Immediately prior to the expiration of the last order of suspension, to-wit, November 7, 1914, the Commission caused to be served on the Cotton Belt the following order, bearing date July 10, 1914, commanding it to *cancel* its aforesaid tariff. Said order is as follows:

"INVESTIGATION AND SUSPENSION DOCKET No. 355.
ABSORPTION OF SWITCHING CHARGES
AT ST. LOUIS, MO.

It Appearing, That on December 19, 1913, the Commission entered upon an investigation concerning the lawfulness and propriety of the rates, charges, regulations and practices stated in the schedules designated as follows: Chicago, Peoria & St. Louis Railroad Co., Supplement No. 2 to I. C. C. No. 953; and St. Louis Southwestern Railway Co., Supplement No. 5 to I. C. C. No. 3219, and subsequently ordered that the operation of said schedules contained in said tariffs be suspended until November 7, 1914;

It Further Appearing, That a full investigation of the matters and things involved has been had, and *that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.*

It Is Ordered, That the carriers respondent herein and designated in said tariffs be, and they are hereby notified and required to cancel, on or before November 7, 1914, the rates, charges, regulations and practices stated in the schedules specified in said orders of suspension. (Italics ours.)

By the Commission (R., pp. 5-7, 11).

GEORGE B. McGINTY,
(Seal.) Secretary."

Whereupon the said Cotton Belt and the Railway filed their bill in the District Court of the United States, praying that court to set aside and cancel said order of April 20, 1914, suspending said tariff for said period of six months (from May 7th to Nov. 7, 1914), and to enjoin the enforcement of said order requiring the cancellation of said tariff; which said bill was, as heretofore stated, ordered dismissed; from which order of dismissal this appeal was taken to this court.

Report of Commission in Cause No. 3151, Made Part of Said Order.

It will be noted that the following recital immediately precedes said order of cancellation, viz:

> "It Further Appearing, That a full investigation of the matters and things involved has been had and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:
> "It is ordered," etc.

Therefore, in order to consider the points of law presented by appellants against the validity or lawfulness of said order of suspension and of said order of cancellation in the instant case, we must briefly refer to said report containing the findings of fact and conclusions of the Commission made in No. 3151. These findings and conclusions will be found in 21 I. C. C. 304, opinion rendered June 21, 1911; the second rendered June 1, 1913, in 28 I. C. C. 93; and the third and last dated July 10, 1914, in 32 I. C. C. 100.

Cause of Action in No. 3151.

For the purpose of this appeal it is not necessary to discuss in detail these various and varying opinions or decisions of the Commission. Suffice it to say that they arose out of a complaint brought by the Railway and shippers along its line of road against the various trunk line railroads entering St. Louis. The merits of that controversy will be presented in the appeal in that case (No. 143) taken to this court at the same time as was the appeal in the instant case.

Up to March 1, 1910, and long prior thereto, all the trunk line roads serving St. Louis applied the flat St. Louis rates from and to points on the line of the Railway, absorbing into said rates the switching charges of the Railway. On said first day of March, 1910, all of said trunk line carriers *cancelled* their respective tariffs absorbing the said charges of the Railway, and refused thereafter to pay it for its switching services and refused to apply the flat St. Louis rates to traffic originating at or destined to industries located on the line of the Railway, thus requiring shippers along said line of railway to pay a switching charge in addition to

said St. Louis rates. By thus withdrawing or cancelling their absorption tariffs, said trunk lines increased their rates to and from said points on the line of the Railway. On such shipments they still collected the St. Louis rates, but rendered less service than formerly for said rates. By such action of said trunk lines the shippers and the receivers of freight on the line of the Railway were required to pay increased rates over those formerly prevailing by the amount of the switching charges assessed by the Railway (R., pp. 456, 459, 490).

Findings of Commission in First Opinion.

In its first opinion rendered June 21, 1911, the Commission held that the complaint of the Railway and its shippers *was justified* and that the *cancellation of their tariffs* by the trunk line carriers providing for the absorption of reasonable switching charges of the Railway, out of the St. Louis rate, *had subjected complainant shippers to the payment of unjust and unreasonable charges* and to *undue prejudice and disadvantage,* and had given to other shippers in St. Louis located on other terminals an undue preference and advantage (R., p. 35).

No order, however, was made by the Commission on said trunk line carriers to restore their former tariffs, because *prior* to the rendition of said opinion said defendant carriers had *voluntarily* attempted to restore the former status and had re-published and filed new tariffs *again extending their St. Louis rates to points on complainant Railway;* said tariffs providing for the absorption of the switching charge of the complainant Railway. Owing to the fact that these last named tar-

iffs (although *voluntarily* published by said carriers) were filed with the Commission while said case was still under advisement, the Commission, upon its own initiative, had suspended the same. However, upon the rendition of its said opinion (June 21, 1911) the Commission cancelled, as of July 15, 1911, its *said order of suspension*. Whereupon said new tariffs, filed as aforesaid, became effective on and after July 15, 1911, and from and after said date and until the promulgation of the second opinion (dated June 21, 1913,) said complainant Railway received from said trunk line carriers out of the flat St. Louis rates, the sum of $4.50 per car for its switching services, and the shippers located on its lines of railway paid only the St. Louis rates (R., p. 35).

Although the Commission in said opinion had decided that the action of the trunk line carriers in *refusing to apply* the St. Louis rates to shippers on the line of the complainant Railway and to pay out of said rates a reasonable division to the complainant Railway was unlawful, the case was held open for further proof, the Commission concluding its opinion by saying:

> "The record before us does not present a sufficient basis for the satisfactory determination of the question as to the reasonable and just division or allowance to the complainant carrier.
>
> "And the further question as to whether a part of the service performed by it is or is not a plant facility service within the principles enunciated in the cases above referred to. Respecting *these questions* further investigation by the Commission will be made. No order will be entered at the present time" (italics ours) (R., p. 36).

Supplemental Hearings and Opinions.

In accordance with the foregoing statement a supplemental hearing was had at which some of the defendant carriers prevailed upon the Commission to open up the *entire case* and not to confine said hearing to the particular questions reserved as aforesaid (R., pp. 43-44). After the supplemental hearings were had, the Commission, on June 21, 1913, rendered its second opinion, wherein it overruled its former decision and held that the prior cancellations of their absorption tariffs by the trunk lines were *lawful* and did *not result in unreasonable rates per se* or *in discrimination against the Railway or its shippers.* While no order was entered by the Commission the defendant carriers, nevertheless, immediately cancelled their said tariffs which had become effective as of July 15, 1911, as aforesaid.

Although the Commission in its second opinion of June 21, 1913, held that the action of the trunk line carriers in canceling their absorption tariffs was *not unlawful,* yet at the same time it held that such carriers might *voluntarily* publish such tariffs, and the Cotton Belt relying thereon, did on December 7, 1913, (nearly six months thereafter) *voluntarily* publish and file with the Commission its tariff, entitled Supplement No. 5 to I. C. C. No. 3219, agreeing to extend the St. Louis rates to and from points on the Railway and to pay said Railway from out of said rates its published rate of $4.50 per car for its switching services. This tariff of the Cotton Belt the Commission, by its order hereinbefore referred to, suspended until November 7, 1914; and shortly prior to that date entered the order herein complained of, commanding the Cotton Belt to cancel the same.

SPECIFICATIONS OF ERROR.

1.

That the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, erred in dismissing the said suit, and in entering a final decree in favor of the said respondents, United States of America and Interstate Commerce Commission, for their costs, against petitioners.

2.

That said Court erred in not setting aside the order of the Interstate Commerce Commission, dated April 20, A. D. 1914, suspending the tariff of the St. Louis Southwestern Railway Company, viz.: its Supplement No. 5 to I. C. C. No. 3219 for a period of six months, viz.: from May 7, 1914, to November 7, 1914, because said Commission had no lawful authority to make said order, there having been no hearing granted said Railway Company during the first period of suspension of one hundred and twenty days.

3.

That said Court erred in not setting aside the order of said Commission of date July 10, 1914, commanding the St. Louis Southwestern Railway Company to cancel, on or before November 7, 1914, the rates, charges, regulations and practices, stated in its Supplement No. 5 to I. C. C. No. 3219.

4.

That said Court erred in not setting aside said order of the Commission of July 10, 1914, because there was

no proof before the Commission that the payment of $4.50 per car, provided for in said tariff to be paid to the Manufacturers' Railway Company, for its services, was so excessive as to amount to a rebate to the joint owners of the capital stock of the Anheuser-Busch Brewing Association, a corporation, and the Manufacturers' Railway Company, a corporation.

5.

That the Court erred in not setting aside said order, because the Commission was without authority in law to make said order until, upon investigation and hearing, it had first found that the payment of $4.50 per car, as provided in said tariff, was so excessive as to constitute a rebate or discrimination in favor of the joint owners of the Anheuser-Busch Brewing Association and the Manufacturers' Railway.

6.

That the Court erred in not setting aside said order of July 10th, because the same exceeds the power of the Commission in that said order is unconstitutional, and if made effective will deprive petitioner, Manufacturers' Railway Company of its property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, for the reason that a rate of less than $4.50 per car is not, and will not be, sufficient to pay the cost of transportation performed by said Railway Company and yield it a just and fair return upon the fair value of the property used by it in said transportation.

BRIEF OF ARGUMENT.

I.

The second order of the Commission, suspending the tariff of the Cotton Belt for six months, was made without lawful authority and is, in effect, a denial of due process of law.

(*a*) The power to suspend said tariff for six months was conditioned upon the Commission's having *enterea* upon and its being unable to *conclude* a hearing, concerning the matters involved, within the first period of suspension, to-wit: one hundred and twenty days.

(*b*) No hearing on the matters involved in the suspended tariff was begun within said one hundred and twenty days, and, therefore, the order of suspension for six months, as well as the order cancelling said tariff, were arbitrary and unlawful.

(*c*) The issues involved in cause No. 3151 on the Commission's docket were not the same as the issues presented in the matter of the suspended tariff, entitled I. & S. 355.

II.

The arbitrary order entered in I. & S. 355 requiring the cancellation of the Cotton Belt tariff was, in effect, an order prohibiting the payment of a division or an allowance *as great as* $4.50 per car.

Said order limiting the payment to the Manufacturers' Railway Company of less than $4.50 per car for its service, is confiscatory and in violation of the Fifth Amendment of the United States Constitution.

ARGUMENT.

I.

THE SECOND ORDER OF THE COMMISSION, DATED APRIL 20, 1914, FURTHER SUSPENDING THE TARIFF OF THE COTTON BELT FOR A PERIOD OF SIX MONTHS, TO-WIT: FROM MAY 7TH TO NOVEMBER 7TH, 1914, IS ARBITRARY AND MADE WITHOUT LAWFUL AUTHORITY AND IS IN EFFECT A DENIAL OF DUE PROCESS OF LAW (Assignment of Error No. 2).

The authority of the Commission to suspend a tariff of a common carrier subject to the Act to Regulate Commerce, is found in the second paragraph of Section 15 of said act as amended June 29, 1906, and June 18, 1910, and is as follows:

> "Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such sched-

> ule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective; Provided, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months."

The power thus conferred upon the Commission to suspend the effectiveness of tariffs *prior* to any hearing or determination of their unlawfulness, is a drastic one and in its exercise the Commission should be held to a strict conformity with the provisions of the act conferring the power.

As said by the Court in American Sugar Refining Company v. D. L. & W. R. Co., 207 Fed. Rep., 733:

> "So far as carriers are subjected by the act to the administrative authority of the Commission, that authority must be strictly pursued. The acts of the Commission in exercise of its administrative functions must, in order to be effective, strictly conform to those provisions and requirements of the act by which its authority is prescribed and defined. Especially is this true as to those provisions of the act relating to the important and vital functions of rate-making and rate-changing, which, aside from statutory regulations and the

requirements of the common law, as to the duty of common carriers can be exercised within the domain of that freedom of contract that is incident under free institutions to individual enterprise. The powers given the Commission in this respect is confessedly a large and ample one, and for that reason, it is more necessary that its exercise should be confined within the limits expressly provided by the statute."

It was undoubtedly the purpose of Congress in giving to the Commission the arbitrary power to suspend tariffs, before giving to the parties concerned an opportunity to be heard, to require that a speedy hearing be had thereon, hence the limitation of the exercise of that power to one hundred and twenty days. As evidencing this requirement the act authorizes the Commission to "at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice."

Suspension Docket.

There is a special docket kept by the Commission applying to the matter of the "Suspension of Tariffs" upon which cases of this character are entered, called the "Investigation and Suspension Docket," on which docket the matter of the tariff in question of the Cotton Belt was entered and given the title of "I. & S. No. 355."

Acting under the power given by this section the Commission, under date of December 19, 1913, entered an order that it, the Commission, without formal pleading, enter upon a hearing concerning the lawfulness of

the Cotton Belt tariff and further ordered the suspension of the same until May 7, 1914, and that a copy of said order be filed and a copy served upon said Railway Company and that it be made respondent to this preceeding and *duly notified of the time and place of the hearing above ordered.* A copy of this order was duly served on the Cotton Belt.

Before the expiration of said order of suspension, to-wit: on April 20, 1914, the Commission entered an additional order further extending the period of suspension for six months from May 7, 1914, until November 7, 1914, a copy of which order was duly served on the Cotton Belt.

Said Order of April 20, 1914, is Arbitrary and Was Made Without Lawful Authority.

By said Section 15 the Commission is given authority:

> "Either upon complaint or upon its own initiative without complaint, *at once*, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but *upon reasonable notice, to enter* upon a hearing concerning the propriety of such rate; * * * and pending such hearing * * * may suspend the operation of such schedule, * * * but not for a longer period than one hundred and twenty days beyond the time when such rate * * * would otherwise go into effect: * * *
>
> "*Provided*, That if any such hearing *cannot be concluded* within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months" (italics ours).

It is our contention that the power or authority of the Commission to further suspend this tariff after the expiration of said *one hundred and twenty days,* was conditioned upon its having, within said one hundred and twenty days, actually *entered upon a hearing* concerning the propriety of the rate, fare, charge, etc., contained therein. Only in the event that a hearing *begun* within said one hundred and twenty days *could not be concluded* within said period, did the Commission have the power to lawfully extend the time of suspension for a further period of six months.

That the Commission itself so construes the act appears from the language used by it in the preamble to its second order of suspension, viz:

> "It Appearing, That *by an order,* dated the 19th day of December, 1913, the Interstate Commerce Commission *entered* upon a hearing concerning the propriety of the new individual regulations and practices affecting rates and charges, stated in the schedules contained in tariffs, designated as follows."

The mere entry of said order of December 19th cannot be held to have been the commencement of a hearing, because such order expressly provides for a hearing *in the future* and *notice to the said carrier "of the time and place of the hearing above ordered."* The succeeding paragraph of said preamble also indicates that the Commission was of opinion that it could not further suspend said tariff except upon condition that it was unable to *conclude* such hearing within said one hundred and twenty days, because this further recital appears therein, to-wit:

> "It Further Appearing, That such hearing cannot be *concluded* within the period of suspension above stated, It Is Ordered:" etc.

The lawfulness, therefore, of said order suspending said tariff of May 7, 1914, to November 7, 1914, depends upon the question of fact whether the Commission began a hearing concerning the rates, charges, etc., contained in said tariff, *within* the one hundred and twenty day period, and whether within said period the Commission was *unable to conclude* the same.

The Wisconsin court has held that the word "hearing" has an established meaning as applicable to equity cases. It means the same thing in those cases that the word "trial" does in cases at law. Akerly v. Vilas, 24 Wis. 171.

A hearing means the granting an opportunity to the parties concerned to adduce testimony and to explain or refute that which may be offered against them. This court in Int. Com. Com. v. L. & N. R. R. Co., 227 U. S., 88, 93, said:

> "The Government further insists that the Commerce Act (36 Stat. 743) requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created, and having been given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing, for manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain, or re-

> fute. * * * In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense."

In regard to the contention that no hearing, in I. & S. No. 355, was begun during the one hundred and twenty day period aforesaid, the Commission and the United States in their several answers filed in the court below do not specifically deny but in answer thereto say that a hearing in I. & S. No. 355 was unnecessary, because the matters therein involved were embraced in and determined by the Commission in the case theretofore and then pending before it, designated on its docket as No. 3151, entitled "Manufacturers' Railway Company, *et al.* v. St. Louis, Iron Mountain & Southern Railway Company, *et al.*" and that the Cotton Belt having been a defendant in that cause and afforded a full hearing therein, was not entitled to a separate or additional hearing in I. & S. No. 355.

This contention of the appellees renders necessary the ascertainment of what were the issues actually considered and determined by the Commission in No. 3151, as evidenced by its reports and order therein.

Are the findings of the Commission, as evidenced in its reports or in its order made in No. 3151, sufficient to sustain the said order of suspension and the said order of cancellation made in I. & S. No. 355?

(a) The Facts Found in No. 3151 Do Not as a Matter of Law Sustain the Orders in I. & S. 355:

That the Cotton Belt might *voluntarily* extend the flat St. Louis rates to points on the Railway and pay to the Railway a *portion* of the revenue received from said rates is conceded by the Commission.

On page 101 of its second opinion in No. 3151 (28 I. C. C. 93) the Commission said:

> "Sometimes, for competitive or other reasons, a trunk line will absorb the charge of a connecting terminal line for gathering freight originating on the latter to the rails of the trunk line. While the trunk line *may thus make such absorptions voluntarily*, we have not had cited to us and are not ourselves familiar with any principle of law under which the Commission could *compel* the trunk lines thus to bear not only the expense of the service of a connecting terminal line but the reasonable profit in addition which presumably will be included in the terminal carriers' rate."

On page 103 in the same opinion is the following:

> "We are not to be understood as saying that when carriers in the through route under their tariffs absorb the switching charge of a terminal line, the resulting rates are not to all intents and purposes, and in fact, *joint rates* so far as concerns the shipping public. What we do say is that while the trunk lines may thus *voluntarily establish such rates on that basis*, we would not be justified in requiring them to do so."

The order in No. 3151 is as follows:

> "It Is Ordered, That the above-named defendants and the Manufacturers' Railway Company, according as their various lines or routes may run,

be, and they are hereby, notified and required, on or before January 1, 1915, to cease and desist from charging, demanding, collecting, or receiving their present rates on traffic moving in through transportation between points on the line of said Manufacturers' Railway Company and points on the lines of defendants in states other than Missouri, to the extent that said rates exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and the same points in states other than Missouri, by more than $2.50 per car.

"It Is Further Ordered, That the above-named defendants and the Manufacturers Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required to establish and put in force, on or before January 1, 1915, and to maintain in force thereafter for a period of not less than two years, and apply to said traffic, rates which shall not exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and points in states other than Missouri, by more than $2.50 per car."

The above order merely established *maximum joint through rates* to and from points on the Railway. It commands the Railway and the defendants (among them the Cotton Belt) to establish maximum joint rates which shall not exceed the St. Louis rates contemporaneously in effect *by more* than $2.50 per car. There is no provision in said order limiting or fixing the portion or division which might be paid the Railway out of said maximum rates. Under said order the Railway might receive the whole of the $2.50 per car in excess of the St. Louis rates, and as *much more* as the trunk lines are willing to pay it. Or, if the trunk lines see fit they may, in conjunction with the Railway, extend or apply the common St. Louis rates to and from

points on the Railway and make such divisions thereof as may be agreed upon.

The suspended tariff of the Cotton Belt complied with the aforesaid order in establishing joint through rates with the Railway not in excess of the St. Louis rates. The *form* of said tariff was in conformity with the requirements of the Commission, as expressed by it on page 105 of its third and final opinion in No. 3151 (32 I. C. C. 100), to-wit:

> "The joint rates prescribed herein may be published, if desired, by merely adding to the trunk lines' tariff naming rates to and from St. Louis a note to the effect that rates to and from points on the complainant railway will be so much a car higher than the rates to and from St. Louis, and by showing the complainant Railway as a participating carrier therein. If the trunk lines elect voluntarily to participate in the establishment and maintenance of rates to and from points on the complainant Railway on *the St. Louis basis,* it will only be necessary to *show the complainant Railway as a participating carrier in the trunk lines' tariffs.*"

Since the suspended tariff of the Cotton Belt complied with said order regarding the establishment of maximum joint through rates, and the form of said tariff complied with the requirements of the Commission, the only question presented by the filing thereof, for the consideration of the Commission in regard to its suspension or warranting its cancellation, was whether the *division* of the joint rates therein prescribed was reasonable.

In view of the common ownership of the brewery and the Railway it was the duty of the Commission, after

affording the parties concerned a hearing to *definitely* determine whether the proposed division set out in the suspended tariff was such as to amount to a rebate or discrimination in favor of the owners of the Railway, because of its disproportionate amount in view of the services rendered; and if found that such proposed amount was excessive, *to fix by appropriate order* the *amount the Railway* might lawfully receive (Tap Line Cases, 234 U. S. 1, 29).

Amount of Division Not Fixed by Said Order in No. 3151:

The reason said order did not fix the amount of the division the Railway might lawfully receive for its services, is due to the fact that the Commission did not consider that such an issue was before it in said case No. 3151, because, in its second opinion (28 I. C. C.) on page 103, it said:

> "Therefore, in the final analysis there are before the Commission in this case the two questions, (1) whether there is an undue discrimination against the shippers on the Railway by reason of the absorption by the trunk lines of the charges of other terminal carriers in St. Louis under like conditions, and (2) if there is no such discrimination, should the Commission establish joint rates, and, if so, upon what basis?"

(b) The Reports or Decisions in No. 3151 Show That the Amount of the Division of the Joint Rates Which Might Lawfully be Paid the Railway was Left Undetermined.

At least the alleged findings of the Commission in the above respect appear to be so indefinite and uncertain

as to fall short of that reasonable certainty required, and are insufficient to support the order requiring the cancellation of said tariff. In its final opinion (32 I. C. C. 100) the Commission states, that "we shall fix the divisions upon further investigation." On page 103 it uses the following language, viz:

> "As we herein affirm the findings and conclusions contained in our supplemental report, we shall proceed in connection with this report to enter an appropriate order. It will require the establishment and maintenance by complainant Railway and its trunk line connections, defendants herein, of *maximum joint rates* to and from points on the complainant Railway which shall not exceed in amount the trunk lines' rates to and from St. Louis by more than $2.50 a car. Then, whether the carriers in the through route establish rates on that maximum basis, or through the *voluntary agreement* of the trunk lines, on a basis, not higher than their St. Louis rates, upon *failure* of the trunk lines and the complainant Railway *to agree* upon the proper basis of division thereof, and *upon request to us so to do, we shall fix the divisions, upon further investigation,* as provided in the act. If *that inquiry shall confirm* our present *impression* that $2.50 a car is a reasonable division to the complainant Railway we shall grant it that amount. If, on the other hand, we shall be convinced by the evidence that $2.50 a car is too much or not enough, we shall fix the amount accordingly. Or, in case we are not asked by the carriers to fix the divisions, upon proper cause appearing we may in our discretion institute an inquiry upon our own motion under those provisions of the act which forbid the giving or receiving of rebates or undue concessions, directly or indirectly, by any device whatsoever, having in mind particularly in connection therewith the fact of the common ownership of the Railway and Brewing Association stock."

Again on page 105, the Commission says:

> "We desire to make plain herein, as we endeavor to do in our supplemental report, that we are asked in this proceeding to establish these joint rates on the St. Louis basis by affirmative order in a contested case. We merely say in response to that request that this is something which we cannot do, and that if the trunk lines elect voluntarily to establish joint rates on that basis instead of on the maximum basis herein prescribed, the *division thereof* which they may lawfully pay and the complainant railway lawfully receive shall not, in view of the common ownership of the complainant Railway and Anheuser-Busch Brewing Association stock, be more than *just and reasonable* for the service which the complainant Railway performs,"

Here is a direct declaration that if the trunk lines elect voluntarily to establish joint rates on the St. Louis basis (exactly what the tariff of the Cotton Belt did), the division thereof which they may lawfully pay and the complainant Railway lawfully receive shall not, in view of the common ownership of the Railway and the Brewing Association stock, be more than *just and reasonable for the service which the Railway performs.*

That the Commission made no finding that $4.50 per car constituted a rebate to the owners of the Brewing plant appears from its statement, viz:

> "In case we are not asked by the carriers to fix the division, upon proper cause appearing we may in our discretion institute an inquiry upon our own motion under those provisions of the act which forbid the giving or receiving of rebates or undue concessions, directly or indirectly, by any device whatsoever, having in mind particularly in connection therewith the fact of the common ownership

of the Railway and the Brewery Association stock."

The only authority the Commission had for striking down the said tariff was to be found under those provisions of the act referred to. The finding of a rebate, or undue concession, was a condition precedent to the validity of the Commission's order of cancellation. If the evidence in No. 3151 was insufficient to enable the Commission to reach a definite conclusion on such issue, it was incumbent upon it to have heard evidence in I. & S. 355 in which such issue was directly presented. Without full and sufficient proof of the unlawfulness of said tariff in the above respect, the action of the Commission in ordering the same canceled was arbitrary and void.

It would appear that the evidence in No. 3151 was of only sufficient strength to create an *impression* on the mind of the Commission on said important issue, for it said:

> "If that inquiry shall confirm our present impression that $2.50 a car is a reasonable division to the complainant Railway we shall grant it that amount."

In its second opinion in No. 3151 (28 I. C. C.) on page 106 the Commission said:

> "We understand there has never been any question of through routes in this case, even during the interim in which these allowances were not paid. Therefore the only remaining question is as to the amount to be added to the rate of the trunk lines in making the joint rates. The present allowances are, as stated, from $3.50 to $5.50 per car. Complainants now ask for a uniform allow-

ance of $4.50 per car, which is said on the average to be lower. * * *

"A considerable volume of testimony has been submitted on this phase of the case, including a comprehensive analysis of the physical assets and accounts of complainant railway. This part of the record has been given careful consideration, from which we are of the opinion that the division of the joint rates accruing to the railway should not exceed $2 per car. However, we shall not by *definite finding* and order fix these divisions now. This is our original finding with respect to the establishment of joint rates, and the carriers, in accordance with the provisions of the act, will be given an opportunity to agree among themselves. If they cannot agree upon this basis the Commission will make such further investigation as may be necessary to make a definite finding and order in this respect."

In its third and final opinion (32 I. C. C. p. 103) the Commission said:

"In our supplemental report we expressed the opinion that from the evidence before us a reasonable division to the complainant railway out of any joint rate which might be established between it and its trunk line connections would be perhaps not to exceed $2.00 a car. Upon further consideration we express the view that, subject to any necessary modification thereof upon further hearing with respect to divisions, if the necessity for such further hearing shall later arise, the division accruing to the complainant railway should not exceed $2.50 a car."

It clearly appears from the foregoing quotations, as well as from other expressions found in the reports and from the order made in No. 3151, that the Commission's *impression* that $2.00 or $2.50 per car would be

a reasonable amount to pay to the Railway was not intended to be such a finding as would support an order based thereon; for, after expressing the opinion "that the division of the joint rates accruing to the Railway should not exceed $2.00 per car" it adds:

> "However, we shall not by *definite* finding and order fix these divisions now. This is our original finding and order with respect to the establishment of joint rates, and the carriers in accordance with the provisions of the act will be given an opportunity to agree among themselves. If they cannot agree upon this basis the Commission will make such further investigation as may be necessary to make a definite finding and order in this respect."

The filing of the suspended tariff by the Cotton Belt, wherein it proposed to pay the Railway $4.50 per car, was in strict conformity with the permission granted by the Commission when it said—

> "If they (the carriers) cannot agree upon this basis ($2.00 per car) the Commission will make such *further investigation* as may be necessary to make a *definite* finding and order in this respect."

In view of the aforesaid expressed declaration of the Commission, that in case the carriers failed to agree with the impression of the Commission as to the reasonableness of a division of $2.00 per car, by what other method, under the act, could such an issue have been presented to the Commission except by that of filing such a tariff as was filed by the Cotton Belt? Such tariff raised for determination the very issue which the Commission had said when presented it would make such "further investigation as may be necessary to make a definite finding and order in this respect." Yet,

notwithstanding the fact that what amount of the joint rate would be a reasonable division to pay the Railway was left undetermined in No. 3151, the Commission, without any further investigation or any additional evidence, issued its order in I. & S. 355 condemning the division of $4.50 per car. If the evidence in No. 3151 was insufficient to support a definite finding in the above respect, then the order of cancellation in I. & S. 355 is arbitrary and without evidence to support it. Furthermore, considering the nature of the charge involved in I. & S. 355, viz., the payment and receipt of rebates, not only the Cotton Belt, but the owners of the Railway and of the Brewing Association should have been afforded opportunity to refute such a charge and that such opportunity was afforded them should *plainly and clearly appear. Any doubt thereon should be resolved in their favor.*

(c) Commission in Its Answer Denies That, in No. 3151 It Passed Upon the Question of "Division."

Our contention that the *only issue* raised in I. & S. 355 *had not* been determined in cause No. 3151, is confirmed by *admissions* made by the Commission in its answer in the case at bar, filed in the court below.

On page 15 of said answer appears the following:

> "This respondent (Interstate Commerce Commission) again states that it *made no finding* (in No. 3151) *with respect to division between the St. Louis Southwestern Railway Company and the Manufacturers' Railway Company,* as alleged in said petition, but on the contrary *expressly reserved for future determination* the question of divisions if the necessity for such further consideration should later arise; that said reservation of the question of divisions was and is in strict ac-

cord with the provisions of the act to regulate commerce, as contained in Section 15." (R., p. 22.)

On page 16:

"Respondent further states that what respondent did and all that respondent did by its order entered in Docket No. 3151 was to require establishment and maintenance of maximum joint rates between the Manufacturers' Railway Co., and the trunk lines, as in the act to regulate commerce provided, leaving said Manufacturers' Railway Co., and the trunk lines to establish the joint rates on the lower St. Louis basis if they desired, *and leaving them also to divide that rate among themselves as they see fit*, provided only that in view of the common ownership of a majority of the stock of the Manufacturers' Railway Co., and the Anheuser-Busch Brewing Association, the division of the rate accruing to the Manufacturers' Railway Co., shall be not more than is just and reasonable." R., p. 22.)

The Commission by its said answer makes a distinction between the terms "allowance" and "division." It emphatically denies that in No. 3151 it passed upon or determined the amount of the *division* of the rate which might be paid the Railway, but asserts that in said case No. 3151 it *did* pass upon and determine the amount of an *allowance* which might be paid.

On page 15 of its said answer the Commission says:

"This respondent states, however, that its findings as aforesaid with respect to the unlawfulness of this payment of $4.50 per car were in reference to allowances to said Manufacturers' Railway Co., as allowances they were, and that the matter of divisions as distinguished from allowances was not passed upon by this respondent but on the con-

trary was expressly deferred for further consideration if the necessity for such consideration should later arise." (R., p. 22.)

The Commission having thus conceded our point viz., that it had not in No. 3151 passed upon or determined what amount of a joint through rate (division) might lawfully be paid the Railway, we are brought to a consideration of its claim that in No. 3151 it had passed upon and determined what amount might lawfully be paid the Railway as an *allowance* for its service.

If by such attempted distinction the Commission wishes to be understood as holding that, although it fixed and determined the amount which might be lawfully paid the Railway as an "allowance" but by such finding had not foreclosed consideration of the question of what amount as a "division" of a joint rate might lawfully be paid, it thereby agrees with our contention that the issue presented, in I. & S. 355, was undetermined by its findings in No. 3151, and that in the mind of the Commission the issue in No. 3151 did not include the issue raised in I. & S. 355.

We respectfully insist, that the question at issue in No. 3151 was the lawful amount which might be paid the Railway as a *division* of a joint rate (which the Commission admits it did not determine), and was *not* the amount which might be paid it as an *allowance*. This we think is conclusively shown by the following statement made by the Commission, with reference to the rates and tariffs it then had under consideration, on page 103 of its second opinion (28 I. C. C.), viz.:

"We are not to be understood as saying that when carriers in the through route under their

tariffs absorb the switching charge of a terminal line, the resulting rates are not to all intents and purposes, and in fact, *joint rates* so far as concerns the shipping public."

And again, in relation to complying with its order in No. 3151 establishing through joint rates to and from points on the Railway it, on page 105 of its final opinion (32 I. C. C.) said:

"If the trunk lines elect voluntarily to participate in the establishment and maintenance of rates to and from points on the complainant Railway on the St. Louis basis, it will only be necessary to show the complainant Railway as a participating carrier in the trunk lines' tariffs."

In Utica Traf. Bureau v. N. Y., etc., R. R., 18 I. C. C. 168, the Commission held that:

"The application of a through rate on coal from the mine and absorption of the switching charge to the mill of an industry in effect names a through rate from the mine to the mill."

(d) That Part of Section 15 Relating to "Allowances" Is Not Germain to the Question Involved in No. 3151:

There was no such issue as the "reasonableness" of an "allowance" involved in case No. 3151. An allowance under the act is a particular sum paid to a *shipper* for some service rendered or facility furnished and, as the Commission expressly declares in its answer that in making its findings and order in No. 3151 it did not exercise the power given it under Section 15 regarding the fixing of divisions of rates between carriers, it must have proceeded in that case under that part of said Section 15 which is as follows:

"If the owner of property transported under

this act directly or indirectly renders any service connected with such transportation or furnishes any instrumentality used therein the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

"Allowance" Under Section 15 Cannot be Made to the Railway:

As the Commission held in all three of its opinions in No. 3151 that the Railway *was a common carrier,* and not a plant facility of the brewery, and in its second opinion (28 I. C. C., page 102) said:

"Assuming the newly made carrier to be under the law a common carrier in all respects, such as it represents itself to be, it is evident that allowances under Section 15 of the act can no longer be made to the owning industry as for services rendered by the shipper, as the Railway is no longer a part of or in law connected with the latter which is 'the owner of property transported,' to whom alone, under that section of the statute, allowances may be made, but is in the contemplation of the act in the same position as it would be if it had been constructed and was being operated by parties having no interest whatever in the owning industry." (Page 108.)

"Allowances under this section (15) of the act can be made only to the 'owner of property transported,' which in this case, by the Railway's own contentions, is either the Brewery or the independent shippers located on the railway."

Hence any attempted exercise of power by the Commission in relation to the fixing of an *allowance* in cause No. 3151 was without lawful authority.

In view of the many different if not conflicting expressions to be found in the reports in No. 3151, and in view of the Commission's own interpretation thereof (as evidenced by its answer filed herein), we believe that the Cotton Belt and the Railway were justified in submitting to the Commission the said suspended tariff in order that the Commission might, after a hearing thereon, definitely determine whether the proposed division of $4.50 per car constituted a rebate to the owners of the Brewery (especially as the evidence on that question in 3151 related to the conditions existing several years prior), and if the Commission so found, said carriers might obtain an authoritative declaration as to the exact amount which might lawfully be paid.

As we understand the decision of this court in the Tap Line cases (*supra*), it is not only the duty of the Commission in such cases to find whether the proposed division is excessive, but it is also its duty at the same time, by appropriate order, to state definitely to the interested carriers what amount may lawfully be paid.

We respectfully submit, that the findings made by the Commission in No. 3151 lack that definiteness and certainty required by the act, and that the order of the Commission of April 20, 1914, further extending the period of the suspension of the said tariff of the Cotton Belt beyond one hundred and twenty days was arbitrary and in excess of its powers, because no hearing on the issue involved in said tariff had been granted the parties interested within the first period of suspension, to-wit, from January 7, 1914, to May 7, 1914,

and therefore said tariff became effective from and after May 7, 1914, and could only be annulled and set aside by the Commission after a full hearing as provided in Section 15 of the Act to Regulate Commerce, and that the final order of the Commission of July 10, 1914, requiring the cancellation of said tariff, was and is contrary to law and should be set aside.

(e) The Commission Did Not Find in No. 3151 That an Allowance of $4.50 a Car Was Excessive:

We respectfully dissent from the statement that in No. 3151 the Commission found that $4.50 per car as an *allowance* would, in effect, be a rebate to the owners of the Brewery. In its second opinion (28 I. C. C.) on page 111 the Commission said:

> "It follows from what we have said herein that we regard the present allowances which, as stated, average slightly *above* $4.50 per car as effecting unlawful results."

It was the amounts paid the Railway *prior to* March, 1910, that the Commission condemned. It found that said amounts varied from $3.50 to $5.50 per car, saying, on page 106 of said opinion, "the present allowances were, as stated, from $3.50 to $5.50 per car." Such amounts the Commission found "average slightly *above* $4.50 per car."

In view of this finding the statement on page 103 of its third opinion (32 I. C. C.), we respectfully aver, is not accurate, viz.:

> "We held (2nd opinion) that the former allowances of $4.50 a car paid by the trunk lines to the complainant Railway were excessive."

Said finding, as we have stated, was not that $4.50 per car was excessive, but that average payments slightly *above* $4.50 per car would amount to a rebate. It might well be that the difference between an average per car slightly above $4.50 and a fixed amount of exactly $4.50 per car would be determinative of the very question at issue, viz., the unlawfulness of such payment. Especially would this be true were the number of cars handled very large.

In its opinion (21 I. C. C. 304), on page 311, the Commission found that—

> "For the year ending April 30, 1910, there were 42,970 cars handled by the Manufacturers' Railway Co. and of this number 37,546 cars were handled for the Brewing Association."

From the foregoing it would seem clear that the Commission never did condemn as excessive, or as amounting to a rebate to the owners of the Brewery either as a division or as an allowance, the amount offered to be paid by the Cotton Belt on and after January 7, 1914, under its suspended tariff.

II.

THE COURT ERRED IN NOT SETTING ASIDE SAID ORDER OF JULY 10, 1914, BECAUSE THE SAME EXCEEDS THE POWER OF THE COMMISSION IN THAT SAID ORDER IS UNCONSTITUTIONAL AND IF MADE EFFECTIVE WILL DEPRIVE PETITIONER, MANUFACTURERS' RAILWAY COMPANY, OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW, IN VIOLATION OF THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, FOR THE REASON THAT A RATE OF LESS THAN $4.50 PER CAR IS NOT, AND WILL NOT BE, SUFFICIENT TO PAY THE COST OF TRANSPORTATION PERFORMED BY SAID RAILWAY COMPANY AND YIELD IT A JUST AND FAIR RETURN UPON THE FAIR VALUE OF THE PROPERTY USED BY IT IN SAID TRANSPORTATION.

The Order of Cancellation Fixed the Maximum Division at Less Than $4.50 Per Car.

Independent of our contention that the order of suspension of April 20th, 1914, and the order of cancellation of July 10, 1914, are void, because made without lawful authority, as we have endeavored to show in Section One of this argument, we further contend that said order if lawful in other respects, is unlawful in that the same is confiscatory and in violation of the Fifth Amendment of the Constitution of the United States.

While the "arbitrary" order of the Commission in requiring the cancellation of the Cotton Belt tariff does not fix or prescribe the *lawful* amount said carrier *may pay;* yet, nevertheless, it does *in effect* prohibit the Cotton Belt (and all other carriers) from paying to the Railway for its services an allowance or division *as great as* $4.50 per car. In fact, the United States in its answer filed in the court below expressly admits:

"That said order prohibits St. Louis South-

western Railway Company from paying to the Manufacturers' Railway Company as great a sum as $4.50 per car" (Par. 4, page 3).

Is Said Order of the Commission Confiscatory?

To sustain its claim that a maximum rate or a division of a rate of *less* than $4.50 per car would be confiscatory the Railway produced evidence of:

(a) The present fair value of that portion of its property used in or devoted to the transportation of the traffic (interstate) to which the said tariff of the Cotton Belt applied;

(b) The amount of operating expenses incident to the transportation of such traffic;

(c) The net revenue derived from said traffic on the assumed basis of a division of the amount condemned, viz.: $4.50 per car, and

(d) The per cent such net revenue bears to the present value of that part of the property devoted to the purposes of such interstate transportation.

The following quotation is from the Opinion of this Court in the Minnesota Rate Cases, 230 U. S. 352, 434:

> "In determining whether that right (the right to receive just compensation for the service given to the public) has been denied, each case must rest upon its special evidence. But the general principles which are applicable in a case of this character have been set forth in the decisions.
>
> "The basis of calculation is the 'fair value of the property' used for the convenience of the public. Smyth v. Ames, 171 U. S. 361, or as it was put in San Diego Land & Town Company v. National City, 174 U. S. 739, 'What the Company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used for the public.' See also San Diego Land & Town

Company v. Jasper, 189 U. S. 439; Willcox v. Consolidated Gas Company, 212 U. S. 19.

"The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

The Present Fair Value of the Manufacturers' Railway.

J. W. Kendrick, of Chicago, was employed by the Railway to ascertain its present fair value as of January 1, 1915. His qualifications for such work are fully set forth in the Abstract of Testimony taken before the Special Examiner (R., pp. 110-111). He testified that the Railway is situated in South St. Louis between La Salle street on the north and a point near Potomac street on the south, and between Thirteenth street on the west and the Mississippi river on the east (R., p. 111).

That the tracks of the Railway occupy certain rights-of-way under various grants, as follows:

(a) Under ordinances from the City of St. Louis which permit the use of certain streets and alleys;

(b) Under a lease from the City of a certain portion of the unimproved wharf property;

(c) Under a lease from the Board of Education of said City;

(d) Under a lease from the Anheuser-Busch Brewing Association;

(e) On lands belonging to the Estate of Adolphus Busch, the use of which is granted by certain agreements;

(f) On lands occupied under title in fee (R., pp. 132-134).

Witness introduced in evidence a map prepared under his supervision marked "Kendrick Exhibit 1," which has been filed with the record. On this map those portions of the road-way covered by these various grants are shown in different colors. Tracks constructed upon right-of-way granted by ordinances from the the City are shown in "green"; those upon leased lands in "yellow," and those upon lands owned in fee by the Company are shown in "brown." All the tracks thus shown are owned by the Railway. The tracks shown on said map colored red are not owned by the Railway but belong to the Anheuser-Busch Brewing Association, and are operated by the Railway under a lease from said Association (R., p. 111).

Method of Valuation.

The witness stated that in making the valuation he endeavored to conform to the prescribed classification of the Railway Valuation Department of the Interstate Commerce Commission (R., p. 112). The items forming the classification of said Valuation Division of the Interstate Commerce Commission are designated by numbers and all the property belonging to the Railway included in said valuation was so classified and valued.

Taking as a basis the cost of reproduction new, the witness found the value of the entire railroad system or operating property to be, as of January 1, 1915, viz.:

Cost of reproduction new	$2,281,698.14
Depreciation	66,344.36
Present value	$2,215,353.78

The various items with their respective valuations making up said total valuation are set forth under "Summary D" in witness' Exhibit 3 (R., p. 172). Said summary is as follows:

SUMMARY D.

Present Value of Property of Manufacturers' Railway.

I. Road.

I. C. C. Item	Subject	Cost of Reproduction New	Depreciation	Present Value
1.	Engineering	$ 69,141.08	None	$ 69,141.08
2.	Land for Transportation Purposes	557,349.50	None	557,349.50
			Appreciation	
3.	Grading	66,838.15	1,471.89	68,310.04
6.	Bridges, Trestles and Culverts	112,224.29	4,633.32	107,590.97
8.	Ties	47,820.64	18,259.71	29,560.93
9.	Rails	77,624.05	8,135.93	69,488.12
10.	Other Track Material	53,045.61	6,865.88	46,179.73
11.	Ballast	36,584.75	None	36,584.75
12.	Track Laying	44,634.25	None	44,634.25
15.	Crossings and Signs	6,343.00	2,309.00	4,034.00
16.	Station and Office Bldgs.	39,764.34	5,589.43	34,174.91
17.	Roadway Buildings	6,277.53	1,166.01	5,111.52
18.	Water Stations	820.00	24.60	795.40
19.	Fuel Stations	1,431.04	88.69	1,342.35
20.	Shops	124,630.09	1,498.65	123,131.44
30.	Power Substation Bldgs.	1,512.00	15.12	1,496.88
35.	Miscellaneous Structures.	2,815.00	422.25	2,392.75
36.	Paving	23,801.05	3,227.27	20,573.78
37.	Roadway Machines	67.50	7.50	60.00
38.	Roadway Tools	805.29	201.32	603.97
44.	Shop Machinery	43,410.53	597.14	42,813.39
46.	Power Substa'n Apparatus	2,362.00	80.70	2,281.30
47.	Unapplied Construction Material	3,015.90	None	3,015.90
			$53,122.52	
			App. 1,471.89	
	TOTAL ROAD	$1,322,317.59	$51,650.63	$1,270.666.96
	Present Value of Leases	$ 757.102.00		757,102.00

II. Equipment.

51.	Steam Locomotives	$ 79,716.00	$12,130.00	$ 67,586.00
53.	Freight Train Cars	71,756.00	1,057.10	70,698.90
57.	Work Equipment	3,156.54	1,506.63	1,649.91
	TOTAL EQUIPMENT	$ 154,628.54	$14,693.73	$ 139,934.81

III. General Expenditures.

Interest, Items 1 to 47, inclusive, 3¾%	$ 47,650.01		$ 47,650.01
GRAND TOTAL	$2,281,698.14	$66,344.36	$2,215,353.78

The witness stated that in arriving at the present value of the Railway (as shown in Summary D) he had not added to the value of the physical structure as a separate item, an item commonly known as "going-concern," nor did he include in the valuation any sum for the value of the franchises, either from the State of Missouri or the City of St. Louis, although he was aware that the State Board of Equalization of Missouri in 1914 assessed the Railway under the head of "all other property," which means intangible property, namely, the privilege by franchise from the State to operate a railway, the sum of $209,300.00, on which the Company paid State taxes (R., p. 192).

Value of Land.

The witness stated that the values of the land owned and used by the Railway Company, for transportation purposes, stated in his estimate, were furnished him by Julius Pitzman and E. A. Hildenbrandt, real estate experts (R., p. 188).*

Mr. Pitzman testified that he lived in St. Louis since 1854; is City Surveyor of St. Louis and Civil Engineer; has handled real estate in the City for many years, and has divided estates in St. Louis amounting to $50,000,000; is familiar with the Railway, its location and struc-

*NOTE: The witness also submitted other Summaries of valuation, which, however, for the purpose of this case may be disregarded, viz.: Summary A, which includes tracks and yards owned by the Brewing Association shown in red on the map, which are operated under lease, the value of which red tracks amounts to $848,915.86 (see Summary D). Summary C is Summary A minus Summary B. In Summary B all land whether owned or leased by the Railway Company is put in at its market value.

ture; owns a tract of land between the Iron Mountain and Railway; is familiar with the value of property in the vicinity and close proximity to the Railway, and has owned a great deal of property in that locality. He stated that he was requested or employed by the Railway to fix the market value of certain land occupied by that road; that Mr. Hildenbrandt worked with him; that they fixed a market price for the land, and that they examined each piece of property and finally came to some mutual understanding of what they considered it was worth. The witness then stated in detail the value per square foot which he and Mr. Hildenbrandt had placed on the various tracts of property included in said valuation, saying:

> "We based our estimate of the value of the land on sales, the income bearing capacity of the property, and the purpose for which it could be used" (R., p. 223).

Mr. Ernest A. Hildenbrandt testified that he had been in the real estate business thirty years; that he was familiar with the real estate values in South St. Louis in the vicinity and neighborhood of the Railway; that he had been operating there for the last twelve or thirteen years; that he had been requested by the Railway to make a valuation with Mr. Pitzman of certain lands belonging to the Railway; that he went down and looked at the property and investigated it thoroughly; that he was in the room when Mr. Pitzman stated what particular lands were valued and the price per square foot, and that he concurred absolutely with him in these valuations; and that the basis upon which they determined the values were the pres-

ent market value of surrounding and adjacent and abutting property (R., pp. 247-248).

Value of Leases.

On the map before referred to, the greater portion of the large tract of land (intersected by streets and alleys) within the shaded pink lines, and bounded on the west by Thirteenth street, on the east by First street, on the north by Lynch street, and on the south by Utah street, is owned by the Brewing Association. Said Association has leased to the Railway the right-of-way over said tract of land on which the tracks belonging to the Railway, colored yellow, are built, and the use of the tracks colored red, at an annual rental of $24,000.00. The land on the river front, on which tracks belonging to the Railway are constructed, colored yellow, is leased from the City of St. Louis at an annual rental of $4,000.00.

The present value of these leases was stated by these real estate experts as $757,102.00. Such value was arrived at as follows:

Lease From the Anheuser-Busch Brewing Association.

They multiplied the number of square feet furnished by Mr. Kendrick as occupied by the Railroad under said lease, by the valuation per square foot given by them, and thus found the total market value of the land covered by said lease to amount to $1,377,853.00. On a five per cent per annum basis they found the rental value of the land to be $68,892.65. Under the lease the

Railway pays annually $24,000, but as the lessor pays the taxes, estimated at $6,000.00 per annum, the net income to the lessor was reduced from $24,000.00 to $18,000.00. This sum of $18,000.00 they deducted from the $68,892.65, leaving $50,893.00 as the yearly value of the lease to the Railway (lessee) for the unexpired term of seventeen years. They then found the present cash value of an annuity of that sum for seventeen years, as the present value of the lease, viz.: $573,767 (R., pp. 224-225).

The value of the lease from the City of the River Yard, they found in the same way, that is to say, they found the market value of the land covered by this lease to amount to $376,309.00, they then estimated the rental value of that land on a five per cent income on said value, or a rental value of $18,815.45, from this amount they deducted $4,000.00, the present annual rental paid, and found that the present value of an annual income on said sum for nineteen years, nine months and seven days to be in round figures $183,-335.00 (R., p 226); which made a total present value of said two leases to the lessee of $573,767.00 plus $183,335.00, total $757,102.00.*

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*NOTE: Witness Kendrick stated that the original cost of the Railway could not be ascertain 1 from the present records of the Company.

G. F. Moore, president of the Company, testified that he became connected with the Company in February, 1909, but is unable to give the original or construction cost of the property, but that between 1909 and January 31, 1915, there had been expended on the property the sum of $1,386,247.40. That the amount of the capital stock is $1,500,000, of which $1,400,000 has been paid for, at par, in cash and $100,000 distributed as a stock dividend. That the Company has no bonds issued, but has a note outstanding for $375,000, bearing interest at five per cent. That the stock has no market value (R., pp. 267-268).

Apportionment of Value.

This Court, in the Minnesota Rate Cases, *supra*, held that such apportionment must be made on a basis independently of revenue, saying:

> "That is, there should be assigned to each business, that proportion of the total value of the property which will correspond to the extent of its employment in that business" (page 461).

The entire use made of the Railway property may be segregated or classified under different heads which embrace all of the different movements or uses thereof made in the handling of cars operated over the railroad. All cars moving over said Railway are moving either in interstate or intrastate traffic. All cars received from and all cars consigned to points off the Railway must be received or delivered by the Railway at the junction of its tracks with either the Iron Mountain or St. Louis Transfer Railway. Such receipt or delivery is called an "interchange movement." These cars, however, thus interchanged, undergo certain movements *prior* to their delivery or *subsequent* to their receipt from said connecting carriers, which movements are supplementary movements of such traffic and are incidental to and a part thereof. Such supplementary movements may be of interstate cars received from or delivered to such connections, or may be of intrastate cars so received or delivered. Such incidental movements may not correspond with the number of cars received or delivered. For instance, ten interstate cars may, at a certain time, be delivered to one of said connections, three of which cars, after

being loaded and having commenced its interstate journey, may, at the request of the consignor, undergo a movement to the scales for the purpose of being weighed, while the other seven cars undergo no such movement, but are delivered direct to the interchange tracks. Also similar movements of cars received from said connecting carriers may be made before their delivery to the consignee. There is also a movement of many of such cars received and delivered, made between various parts of the plant of the Anheuser-Busch Brewing Association.

The uses, therefore, made of the Railway are embraced within three classes of movements of the cars:

(a) Interchange movements.

(b) Weighing movements.

(c) Interplant movements (R., pp. 268-269).

In order to ascertain the apportionment of the total value of the railroad property to be assigned to interstate and intrastate traffic respectively, on the basis *of the use made of the Railway by each,* we have endeavored to show such use based on all the movements made of cars moving in interstate traffic, and the percentage which such movements bear to the total movements of all cars (loaded cars only are considered).

Analysis of Traffic for Five Months.

G. F. Moore submitted statements showing the number of loaded cars interchanged during various months

in different years (Moore's Exhibit A). The showing was as follows, viz.:

July, 1912, outbound and inbound interstate.....5,029 cars
July, 1912, outbound and inbound intrastate..... 818 cars
Interstate for July, 1912, 86 per cent of total.
January, 1913, outbound and inbound interstate.....3,479 cars
January, 1913, outbound and inbound intrastate..... 576 cars
Interstate for January, 1913, 85 per cent of total.
April, 1913, outbound and inbound interstate.....3,856 cars
April, 1913, outbound and inbound intrastate..... 665 cars
Interstate for April, 1913, 85 per cent of total.
July, 1913, outbound and inbound interstate.....5,840 cars
July, 1913, outbound and inbound intrastate.....1,076 cars
Interstate for July, 1913, 84 per cent of total.
October, 1914, outbound and inbound interstate.....3,529 cars
October, 1914, outbound and inbound intrastate..... 613 cars
Interstate for October, 1914, 85 per cent of total.

Average per cent of interchange interstate cars for whole of said period is 85.3 per cent (R., pp. 270-275).

Percentage of All Cars Weighed Moving in Interstate Traffic.

Witness Moore stated that "the percentage of cars (loaded) moved for weighing or weigh movements, moving in interstate commerce, is substantially the same as the percentage of the interchange movements moving in interstate commerce, namely, 85.3 per cent. This was ascertained by taking a number of months and separating the intrastate from the interstate business and securing the percentage in the same manner as is shown in Exhibit "A" (R., p. 277).

Percentage of All Cars Switched Interplant—Moving in Interstate Commerce.

This witness further testified "the percentage of all cars moved in interplant switching, moving in interstate commerce, is 19.9 per cent, i. e. of the cars handled under our general heading of "Interplant

Movements," 19.9 per cent move in interstate commerce. This percentage was obtained by the same method as we secured the eighty-five per cent, as shown in Exhibit "A" (R., p. 277).

Percentage of Total Movements of Loaded Cars Moving in Interstate Commerce.

Witness testified that taking the months of February, 1911, January, 1912, February, 1913, and December, 1914, that of the total movements, as above described, of all cars 79.3 per cent were of loaded cars moving in interstate commerce. That during June, 1911, August, 1912, July, 1913, and July, 1914, of the like total movements of all cars, 77.5 per cent of such movements were of cars moving in interstate commerce.

That the percentage of said movements of loaded cars during the entire fiscal year ended June 30, 1913, of cars moving in interstate commerce was 79.58 per cent.

That the percentage of such interstate car movements for the fiscal year ended June 30, 1914, was 78.87 per cent.

That for the last six months of the calendar year of 1914, 77.3 per cent of the total movements of all cars were those moving in interstate commerce (R., pp. 278-279).

The witness stated that the foregoing percentages of the use of the property resulting from these different movements were made up by combining the amount of business handled on the percentage given for the different movements. He also stated that the

information as to which cars moved in interstate commerce was obtained from the records of the office, primarily shipping tickets on outbound business and waybills on inbound business and what are known in local office-work as "Freight Received and Forwarded" registers. "These records have been gone over with a view of ascertaining to what points outbound shipments were consigned and from what points inbound shipments came. In that way we were able to determine whether the business was interstate or intrastate. That is the method we applied in arriving at the results I have testified to. (R., pp. 277-278.)

Apportionment of Value.

The total value of the property, as stated by witness Kendrick, was on January 1, 1915, $2,215,353.78. To ascertain the value as of June 30, 1914, there was deducted the amount which went into the property account between June 30, 1914, and December 31, 1914, (which witness Moore testified was $17,133.17) from the value as found on January 1, 1915, which showed that the fair value of the property on *June* 30, 1914, was $2,198,220.61 (R., pp. 318-319).

In order to ascertain the value as of June 30, 1913, a further deduction of $111,745.63 covering the addition to the property account during the fiscal year ended June 30, 1914, was made, leaving as the fair value of the property as of *June* 30, 1913, the sum of $2,086,474.98 (R., p. 319).

Applying the per cent of use, viz.: 78.87 made of the property by the loaded *interstate* car movements during the fiscal year of 1914, to the total value of the property thus found, viz.: $2,198,220.61, gives the value

of the Railway to be *assigned to the interstate traffic* for that year (1914) as $1,733,736.59.

Applying the per cent of use, viz.: 79.58 made of the property by the loaded *interstate car movements* during the fiscal year ended June 30, 1913, to the total value of the property thus found as of that date, viz.: $2,086,474.98, gives the value of the Railway to be *assigned to the interstate traffic* for that year (1913) as $1,659,227.08.

Witness Moore testified that during the last six months of the calendar year, 1914, of all the movements of loaded cars, 77.3 per cent were those moving in interstate commerce, and 77.3 per cent of the value of the entire property as of January 1, 1915, to-wit: $2,215,353.78 or $1,712,468.47 should be assigned to interstate traffic.

To Recapitulate.

For fiscal year 1913 apportionment of value of property, based on use assigned to interstate traffic.....$1,659,227.08

For fiscal year 1914 apportionment of value of property, based on use assigned to interstate traffic.....$1,733,736.59

For six months, July 1, 1914, to January 1, 1915, apportionment of value of property, based on use assigned to interstate traffic.....$1,712,468.47

Gross Revenue for Fiscal Year 1913 from Interstate Car Movements on "Assumed" Basis that the Condemned Rate of $4.50 Per Car Had Been Collected from All of the Trunk Lines on All Such Cars Interchanged.

The order of the Commission in cancelling the Cotton Belt tariff was in effect an order on all of the trunk lines prohibiting them from establishing a similar tariff. The contention of appellant is that such order is confiscatory because a payment by all of the trunk lines, under tariffs similar to that of the Cotton Belt on all interstate cars of an amount less than $4.50 per car would not have yielded a reasonable return on the fair value of the property devoted to the use of cars moving in interstate commerce. Assuming that during the fiscal year 1913 all of the trunk lines, including the Cotton Belt, had had in effect a similar tariff to the one condemned, and that the Railway had actually received payment of a division of $4.50 per car on all interstate cars interchanged to which said payment under such tariff would have applied, the gross revenue on such cars, for said fiscal year 1913 would have equaled the sum of $205,209.00.

Said Moore testified that during said year there had been interchanged (interstate and intrastate) 53,461 cars which he calls "long haul interchange" of which 85.3 per cent or 45,602 were cars moving in interstate commerce, on which, under tariffs similar to that of the Cotton Belt, his company would thus have received $205,209.00 (R., p. 287).

In addition there were interchanged 5,832 "short haul interchange" cars, 85.3 per cent of which, or 4,975 cars, were moving in interstate commerce. On these

4,975 interstate cars, however, under the Cotton Belt tariff the $4.50 per car would not have applied, only the charge of $2.00 per car under City Ordinance being collected and hence the gross revenue from said 4,975 cars, was only $9,950 (R., p. 287).

Had tariffs similar to that of the Cotton Belt been in effect by all of the trunk lines during the fiscal year 1913, the total gross revenue which the Railway would have received on all cars moving in interstate commerce interchanged with its connections would have equaled the sum of $215,159.00.

In addition to the cars interchanged with its connections, the Railway during said year, handled 6,063 cars in interplant movements, 19.9 per cent of which were supplementary movements of cars moving in interstate commerce or a total of 1206 of said cars, on which it received $1.00 per car or $1206.00.

During said year there were 4,428 cars moved for the purpose of being weighed, 85.3 per cent of which number were cars moving in interstate commerce or 3,777 cars on which the Railway received the sum of 25 cents per car or $944.25. The total gross revenue during said year, assuming tariffs similar to that of the Cotton Belt had been in effect by all of the trunk lines, would thus have amounted to $217,309.25 (R., p. 287).

Apportionment of Operating Expense Attributable to the Handling of Cars Moving in Interstate Commerce.

While these different movements considered *individually* vary in length and expense, when each *class*

is considered for an extended period of time the difference in cost between the various classes of movements is not discernible, such movements being entirely switching movements and so commingled together it is practically impossible to differentiate as to the cost of each. Witness Moore testified that he attempted to segregate such cost a number of times, but without success. However, after careful study from actual observation, his opinion is that the average cost for any extended period is practically or substantially the same for each class. His testimony concerning his efforts to allocate the cost is as follows:

> "Concerning the cost to the Company of making these various movements which I have referred to, considering such movements under the classification of interchange movements, intraplant movements and weigh movements, I cannot say that there is any difference in the cost of the movements when so classified. There is at times a material difference in the cost of the individual movements handled under each class, but taking these movements as grouped, for any considerable period of time, I believe that the average cost of the movements of each class will be almost identical. I have tried in every way I could think of to determine whether the average cost of moving a car to have it weighed, exceeds the average cost of moving a car for interchange with connections, or moving a car between one industry in the plant to another. The best way, to my notion, was to ride upon the engine doing the switching, for a certain length of time, and notice the business that that switch crew was handling during the time that I myself was with the engine. That I have done, and I would find the same crew and engine handling all different classes of the named groups in one cut at times, and then at times I would find an

engine moving with only one class of business as grouped, and I could not determine any difference in the cost of handling the placement of one class of business as compared with the placement of another class of business. This was brought out very clearly. It is easier to take four cars at a time and set them on one track than it would be to take the same four cars at four different times and set them on that track; that developed. But for the average cost of handling these groups, after riding probably thirty or forty different times with the switch crews, I could not differentiate between the cost. To summarize that: I believe it costs as much to the Manufacturers' Railway to weigh a car upon which we receive 25 cents revenue as it does to make an intra-plant switch of a car upon which we receive $1.00 revenue; or to make an interchange delivery of a car upon which we hope to receive a larger revenue, or to make a city switch for which, by ordinance, we are limited to a revenue of $2.00.

"To illustrate the similar movement with a cut of cars, for instance, involving each of these services: The switch crew's work would result in their daily performance laid out so as to have the same locomotive serve during the day a particular subdivision of the tracks of the Manufacturers' Railway. Take, for instance, a locomotive serving the Dorcas street tracks and the yards diverging from the Dorcas street tracks. That locomotive may make eight or ten trips up and down Dorcas street during the day. Following out one of the trips: They may have taken cars from the First Street Yard which contained freight coming from New York or from a point in Missouri; some empties that are going to New York or to a point in Missouri; some car which was probably loaded at the bottle shop and goes up to Thirteenth street to be unloaded, that last being an intraplant movement; they would take these cars in hand and

place them on their trip up to Thirteenth street. In returning they would have with them loaded cars moving in interstate business and intrastate business. They would have cars that were made empty and not reloaded, that would be delivered back to the owners, or to the immediate connection, I should say, instead of owners, and they would come down Dorcas street with such a cut of cars behind them. One of those cars that they picked up in the Thirteenth Street Yard some one might want weighed for some reason or other, and they would take that car down to the scales which are located between Arsenal and Utah streets on the property that we received from the Government and have it weighed. It might be that one of those cars from Thirteenth street was partly loaded with beer in cases and it would be brought down and sent into the Second Street Yard as an intraplant movement to be finished loading with keg beer. Each movement of a switch engine, I believe, will comprise more than one class of this group business, and the business is handled just about as I have described it to you. That is from my personal observations.

"So it has been impossible for me to segregate the cost of each of these particular services. I have stated that there is a difference of cost sometimes between handling two cars in a like business. For instance, if I must run up to the north end of my yard to do such service as I have described doing on Dorcas street, then that particular part of that group of business which I have secured by making a trip up to the north end of our track would cost more than the service performed on that particular group of tracks if it were nearer the base of our operations" (R., pp. 279-282).

Rate of Return for Fiscal Year 1913 from Interstate Commerce on the Value of the Property Assigned to the Use of Such Commerce.

Total operating expenses, taxes and rentals for 1913 amounted to $195,628.80, 79.58 per cent of that sum or $155,681.39 is apportioned to interstate commerce business R., p. 319).*

The total gross revenue for said year on interstate commerce was, as aforesaid, $217,309.25. Deducting the expenses apportioned against such commerce, viz.: $155,681.39, leaves a net revenue of $61,627.86 which is 3.71 per cent on $1,660,416.80 the fair value of the property *assigned on the basis of use* to interstate traffic as of that date (R., p. 320).

Rate of Return on Value of Property for Fiscal Year 1914.

Gross revenue from cars moving in interstate commerce on assumed basis that $4.50 per car had been received on all cars to which it would have applied on tariffs similar to that of the Cotton Belt.

Gross Revenue	$206,797.25
Expenses apportioned to said traffic	174,546.28
Net revenue	$ 32,250.97

*NOTE: Some of the land owned by the Company at the time Mr. Kendrick made his valuation was held in 1913 under lease, and witness Moore says: "I adjusted the rentals by eliminating accruals on all property reported by Mr. Kendrick as owned, and recast my computation on that new basis," thus appropriately adjusting that item for the purpose of the computation (R., p. 319).

"In other words, the computation I have made on certain periods, I have decreased the rentals $28,000 per year." This is a misprint and should be, "Have decreased the rentals *to* $28,000 per year, which analyzed means $4,000 a year paid to the city of St. Louis and $24,000 a year paid to the Anheuser-Busch Brewing Association. There are several other small items of rental which I regarded as negligible" (R., pp. 318, 347).

Total value of property June 30, 1914, was $2,198,-220.61. Apportioning such value on basis of use for said year, viz.: 78.87 per cent as the value assigned to interstate commerce or $1,733,736.59, and the net revenue for said year of $32,250.97 is 1.86 per cent of said value (R., p. 320).

The following statement covers the last six months of the calendar year 1914 or the six months immediately preceding the valuation of the property which was made as of January 1, 1915.

Witness Moore testified as follows (R., p. 320):

> "In order to complete the statistics up to the time of the valuation, I wish to present the following statement covering the last six months of the calendar year 1914, based upon Mr. Kendrick's valuation: The business for the last six months of the calendar year 1914 is reduced to loaded car movements, percentages and cost as follows: Long haul interchange: Number of cars handled, 22,075; 85.3 per cent of which or 18,830 cars, at $4.50 per car, would produce $84,735. Local interchange: Number of cars handled, 3,546; 85.3 per cent of which or 3,025 cars, at $2.00 per car, produce $6,050. Intraplant movements: 3,057 cars; 19.9 per cent of which or 608 cars, at $1.00 per car, would produce $608.00. City movements Manufacturers' Railway only, 502 cars. Weighing movements, 1,177 cars; 85.3 per cent of which or 1,004 cars at 25 cents a car, would produce $251.00. This revenue totaled $91,644.00
>
> "The total operating expenses for those six months amounted to $81,251.73; 77.3 per cent of that amount, which represents the proportion of the property used in interstate commerce, or $62,-807.58, is apportioned to interstate business.
>
> "The taxes, divided on the same basis of percentage, would be $3,877.80 and the rentals for the

period would now amount to $14,077; of which amount 77.3 per cent, or $11,822, was apportioned to interstate business.

"The total maximum gross revenue for the six months on interstate business, less the total expenses apportioned against it, would leave a net gain of $13,136.62, or .77 of one per cent on $1,702,468.47, the amount representing 77.3 per cent of the present worth value as appraised, of the actual property investment for the period."*

The foregoing computations have been made on the theory that the Railway rerceived $4.50 per car on all cars to which the tariff of the Cotton Belt would have applied, and we have attempted to show the rate of return on the fair value of the property on that basis. The Commission, however, as appears under the first section of our brief, has limited the earnings of the Railway to $2.50 per car which necessarily produces an annual deficit (R., p. 345). That $2.50 per car is wholly inadequate appears from the testimony of T. A. Hamilton, an expert accountant, who examined the books of the Railway for the purpose of ascertaining the cost to it of switching cars, and who stated that the average cost per car to the Railway was $3.14 (R., pp. 687-692).

Witness Moore's "Exhibit 1" (R., p. 854) shows, for the fiscal year ended June 30, 1911, that the average cost per car for each revenue switching movement was $3.1362. This cost included fixed charges but did not include any return whatsoever to the owners of the Railway on their investment.

*NOTE: Witness Moore also made a computation of the per cent the earnings at $4.50 per car would have yielded on the *book value* of the property (R., pp. 282, 290), which we have not used, because the witness stated that said book value did not truly represent the actual value.

It thus appears that the language of this Court in the Minnesota Rate Cases, *supra,* in relation to the Minn. & St. L. R. R. Co., pp. 469, 472, could very appropriately be applied to the case at bar, viz.: that even if some of the methods of estimating value and of apportionment be disapproved, the margin of error which may be imputed to them cannot be sufficiently great to change the result, to-wit: that any payment of less than $4.50 per car applied to cars handled by this Railway and moving in interstate commerce will fail to permit of a fair return to said Company. It follows that the order of the Commission was confiscatory, and the decree below should be reversed with directions.

SIDNEY F. ANDREWS,
Solicitor for Appellant,
Manufacturers' Railway Company.

FILED
MAR 20 1917
JAMES D. MAHER
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Nos. 24 and 25.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

MANUFACTURERS' RAILWAY COMPANY AND ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, APPELLANTS,

v.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLEES.

MANUFACTURERS' RAILWAY COMPANY, ANHEUSER-BUSCH BREWING ASSOCIATION, ET AL., APPELLANTS,

v.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLEES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

JOSEPH W. FOLK,
Counsel for the Interstate Commerce Commission.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1917

SYNOPSIS AND INDEX.

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STATEMENT OF FACTS 2–16

The Manufacturers' Railway, controlled by the majority stockholders of the Anheuser-Busch Brewing Association, collected on traffic to or from industries on its line, including the brewery, switching charges of $3 to $5.50 per car, such charges being absorbed by the trunk line carriers. These absorptions having been discontinued by the trunk lines, the railway, the brewery, and other shippers, asked the Commission to establish through routes and joint rates, on the St. Louis basis, to points served by the railway, to provide for a "proper and reasonable" division to the railway, and for reparation.

The Commission found that the railway was a common carrier entitled to divisions, and that the cancelation of the absorptions had subjected its shippers to undue discrimination and disadvantage, but no order was entered. The trunk lines thereupon filed new tariffs extending the St. Louis rates to industries served by the railway, and reinstating the former absorptions to the latter. After a supplemental hearing the Commission, in a second report, found that the rates to points served by the railway should not exceed the St. Louis rates by more than the charges accruing to the railway. The Commission also indicated in its report that, in view of the common ownership of the railway and the brewery, the existing allowances, averaging slightly more than $4.50 per car, were effecting unlawful results, and suggested that the division accruing to the railway out of any joint rate which might be established should not exceed $2 per car. The adjustment of divisions, however, was left to the carriers themselves, and no order was entered. In assumed compliance with the views expressed by the Commission the trunk lines canceled the tariff schedules providing for the absorption of the railway's switching charges.

Thereafter the cases were reargued and submitted to the Commission, and while they were pending decision, the Cotton Belt (St. Louis Southwestern Railway Company) filed a tariff providing for the absorption of the switching charges of the railway up to $4.50 per car, thus predetermining one of the issues then under advisement by the Commission. The tariff was accordingly suspended for 120 days, and, prior to the expiration of that period, was further extended for a period of 6 months.

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Before the expiration of the latter period, the Commission rendered its final report, and entered an order directing the extension to points served by the railway of joint rates not exceeding the St. Louis rates by more than $2.50 per car, and ordering the cancelation of the rates and regulations provided in the suspended tariff. Such rates and regulations were thereupon canceled, and the trunk lines, with one exception, extended their St. Louis rates to all points served by the railway. The Commission in its report expressed the opinion that the division to the railway out of the through rates should not exceed $2.50 per car, but stated that this amount might be increased or diminished in accordance with evidence that might be offered upon an application to the Commission to fix divisions, if the carriers should fail to agree under the statute.

The railway, the Cotton Belt, the brewery, and other shippers, without further application to the Commission, instituted proceedings in the District Court of the United States for the Eastern District of Missouri, seeking to annul the suspension order and to enjoin the enforcement of the order entered upon the final report of the Commission. Further testimony was taken before an examiner appointed by the district court, and, after a joint argument of both cases before the district court, an injunction was denied and the petitions were dismissed. From the final decrees of dismissal the railway, the Cotton Belt, the brewery, and other shippers have appealed.

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The railway asked for the establishment of through routes and joint rates, to points on its line, for a reasonable division of such rates, and for reparation. The Commission provided for joint rates not in excess of $2.50 per car higher than the St. Louis rates, and all but one of the trunk lines have extended their flat St. Louis rates to industries served by the railway. The Commission declined to award reparation to the railway or to any of its shippers, because there was no evidence before it to warrant such an award; and while it expressly authorized divisions to the railway, it left to the carriers themselves the primary determination of the amount thereof. It expressed its willingness and purpose, however, upon application of the carriers, to hold such further investigation as might be necessary to enable it to fix divisions. The appellants having failed to exhaust their remedy before the Commission, their application to the district court was premature, and that court committed no error in denying injunctions and dismissing petitions therefor. The decrees of the district court accordingly should be affirmed.

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

MANUFACTURERS' RAILWAY COMPANY AND St. Louis Southwestern Railway Company, appellants,
v.
UNITED STATES AND INTERSTATE COMMERCE Commission, appellees.
} No. 142.

MANUFACTURERS' RAILWAY COMPANY, Anheuser-Busch Brewing Association, et al., appellants,
v.
UNITED STATES AND INTERSTATE COMMERCE Commission, appellees.
} No. 143.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF MISSOURI.

These appeals are brought by the Manufacturers' Railway Company and other appellants to set aside certain decrees, heretofore entered by the District Court of the United States for the Eastern Division of the Eastern District of Missouri, denying injunctions and dismissing petitions filed by the appellants to enjoin the enforcement of certain orders of the Inter-

state Commerce Commission. *Manufacturers' Railway Company et al.* v. *St. Louis, Iron Mountain & Southern Railway Company et al.; Absorption of Switching Charges at St. Louis, Mo.*, Docket No. 3151 and I. & S. Docket No. 355. The cases are inseparably related to each other, were argued together in the district court, and will be so treated in this brief.

STATEMENT OF FACTS.

The material facts of record are as follows:

1. *Anheuser-Busch Brewing Association*—The Anheuser-Busch Brewing Association, hereinafter called the brewery, occupies approximately 126 acres of ground in the city of St. Louis, all closely covered with structures, in which are conducted the manufacture and marketing of beer and related products. The tonnage shipped by and to the brewery constitutes approximately one-thirtieth of the total tonnage shipped from and to the city of St. Louis. Record 142, p. 32. For a number of years following the establishment of the brewery, its inbound raw materials and outbound products were drawn by horse and wagon from and to the tracks of the St. Louis, Iron Mountain & Southern Railway Company, hereinafter called the Iron Mountain. In 1885 the horse-and-wagon method was abandoned, and a plant railway operated by steam was substituted, being what is now known as the Manufacturers' Railway Company, hereinafter called the railway. Record 142, p. 46.

2. *Manufacturers' Railway Company*—The railway was incorporated in 1887 with a capital stock of $25,000, which was increased in 1905 to $100,000, and in 1906 to $250,000. It has a main line of 2¼ miles and approximately 23 miles of sidetrack, and the traffic of the brewery constitutes about 76 per cent of its total tonnage. Record 142, p. 48. The railway is engaged exclusively in the switching and delivering of carload freight within the city of St. Louis. At the time of the hearing before the Commission it owned no cars and only four locomotives, the cars used for the transportation of shipments originating on its line being furnished by the St. Louis Refrigerator Car Company, a substantial portion of the stock of which was and is owned by the holders of a majority of the stock of the brewery. Record 142, p. 47. The facilities of the railway, however, for a considerable period have been available to the public, and it is recognized by the State of Missouri, as well as by the Commission, as a common carrier.

3. *Common control of railway and brewery*—A majority of the stock of the railway was and is owned by the owners of a majority of stock of the brewery. In other words, the same interests that control the brewery also control the railway. Record 142, p. 44.

4. *Terminal Railroad Association of St. Louis*—The Iron Mountain is the only trunk line entering St. Louis which operates its own facilities and

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terminals at that point. All the terminal facilities at St. Louis other than those of the Iron Mountain and the railway are controlled by the Terminal Railroad Association of St. Louis, hereinafter called the terminal asociation. This association is owned in equal shares, respectively, by the 14 trunk lines converging at St. Louis, including the Iron Mountain.

All traffic to or from the east, including that of the railway and excepting only that of the Iron Mountain, is dependent upon the facilities of the terminal association for an inlet to and an outlet from the various industries in St. Louis served by the trunk lines. The tracks of the railway, however, are not accessible to such trunk lines until after they have entered the city via the lines of the terminal association. Record 142, pp. 29–30.

5. *St. Louis Southwestern Railway Company*—The St. Louis Southwestern Railway Company, hereinafter called the Cotton Belt, does not reach St. Louis with its own rails, but enters East St. Louis via the rails of the Iron Mountain, over which it has trackage rights. In serving industries within St. Louis it uses the facilities of the terminal association and of the various carriers within that city, including the railway. Record 142, p. 4.

6. *Absorption by trunk lines of railway's switching charges*—By ordinance of the city of St. Louis the railway is prohibited from charging more than $2 per car for local switching. Record 142, p. 471. Prior to March 1, 1910, the trunk lines applied their St. Louis rates to traffic originating at or destined to

industries served by the railway, absorbing and paying to the railway a switching charge of $3 to $5.50 per car. Record 142, p. 489. On that date the trunk lines canceled their tariffs providing for such rates and for the absorption of the switching charges, not only of the railway, but of 12 other industrial roads with which the trunk lines classed the railway. The trunk lines, however, continued to absorb the switching charges of the terminal association. Thereafter the industries served by the railway, including the brewery, were compelled to pay, in addition to the line-haul charges, an arbitrary switching charge of $2 per car, as permitted by city ordinance.

7. *Original complaint of railway and shippers*— On March 4, 1910, the railway and certain shippers on its line, including the brewery, filed a complaint with the Commission, asking for the establishment, on the St. Louis basis, of through routes and joint rates to and from all points served by the railway, for an allowance to the railway of reasonable divisions of such joint rates, and for reparation.

8. *Original hearing and report of Commission*— The proceeding so instituted was designated by the Commission as Docket No. 3151, *Manufacturers' Railway Co. et al.* v. *St. Louis, Iron Mountain & Southern Ry. Co. et al.;* and on June 21, 1911, after full hearing on the petition of the railway and the answers of the several trunk lines, the Commission therein rendered a partial or preliminary report. 21 I. C. C. 304; Record 142, p. 25. The Commission concluded in this report that, for the purposes indi-

cated, the railway was a common carrier, and that the trunk lines, by canceling the absorptions theretofore included in the St. Louis rates, had subjected the shippers served by the railway to the payment of unjust and unreasonable charges, and to undue discrimination and disadvantage. Record 142, p. 35.

The record then before the Commission affording no satisfactory basis for the determination of the amount of divisions, if any, which should be allowed to the railway, or the amount of reparation, if any, which should be awarded, those questions were expressly reserved by the Commission for determination after further inquiry, and no order was entered.

Just prior to this time most of the trunk lines had voluntarily republished tariffs, extending their St. Louis rates to points served by the railway, and providing for the absorption of the switching charges of the latter, but those tariffs had been suspended by the Commission pending the determination of certain matters then under advisement in Docket No. 3151. Upon the promulgation by the Commission of the foregoing report the order of suspension was canceled as of July 15, 1911, and the trunk lines filed new tariffs effective on and after that date, extending the St. Louis rates to points served by the railway and providing for the absorption of the switching charges of the latter up to $4.50 per car. Record 142, pp. 35, 48–49.

9. *Supplemental hearing and report of Commission*—Thereafter a supplemental hearing was held by the Commission, at which the trunk lines offered evidence,

not only with respect to the matters of divisions and reparation, but on new phases of the controversy, and upon the combined record of the two investigations the Commission reviewed its original findings and on June 21, 1913, filed its second report in the premises. *Manufacturers' Railway Company et al.* v. *St. Louis, Iron Mountain & Southern Ry. Co. et al.*, 28 I. C. C., 93; Record 142, p. 42. In this report the Commission found, Record 142, pp. 53–54, that:

> * * * the payments formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered to the trunk lines and were in no sense divisions of joint rates as for services rendered for the shippers served by the railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expense of similar delivery by the railway upon the rails of that carrier are not subjecting the shippers located on and served by the railway to undue prejudice and disadvantage; that therefore the only lawful order the Commission can make is in the establishment of joint rates if the conditions are such as to warrant that action; that under joint rates so prescribed that part of the service performed by the railway would

> be in the contemplation of the act a service performed for the shipper to be paid for by the shipper and could not be construed by the Commission to be a service rendered for the trunk lines, the expense of which could be required by the Commission's order to be borne by the trunk lines; that the rates of the trunk lines not being shown to be unreasonable in themselves, such joint rates with the railway must therefore necessarily be in excess of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis. * * * This part of the record [testimony as to the physical assets and accounts of the railway] has been given careful consideration, from which we are of the opinion that the division of the joint rates accruing to the railway should not exceed $2 per car. However, we shall not by definite finding and order fix these divisions now.

The Commission in conclusion said, Record 142, p. 59:

> It follows from what we have said herein that we regard the present allowances, which, as stated, average slightly above $4.50 per car, as effecting unlawful results. We should also regard in the same light any effort on the part of the trunk lines to accomplish these results by shrinkage of their St. Louis rates, or by means of per diem or demurrage agreements or practices, or otherwise.

No order was entered by the Commission, the divisions to be established being left, as intended by the act, to the mutual arrangement of the carriers themselves, subject to the express provision that if the carriers should be unable to agree, the Commission would conduct such further investigation as might be necessary to enable it to make an order.

In assumed compliance with the views of the Commission, as expressed in the foregoing report, the trunk lines immediately canceled the absorptions which had become effective on July 15, 1911.

10. *Reargument before Commission*—On November 13, 1913, pursuant to an application filed on behalf of the railway and other appellants for a rehearing, the case was reargued and submitted to the Commission and taken under advisement.

11. *Restoration by Cotton Belt of absorptions in advance of determination by Commission of submitted issues*—On December 6, 1913, pending a determination by the Commission of the questions so submitted, the Cotton Belt and the Chicago, Peoria & St. Louis Railroad Company, both defendants in Docket No. 3151, filed with the Commission, to become effective January 7, 1914, tariffs providing for the absorption of the switching charges of the railway up to $4.50 per car. These absorptions, however, were suspended by the Commission, on December 19, 1913, for a period of 120 days, or until May 7, 1914. The suspension case was designated, for purposes of convenience, as Investigation and Suspension Docket No. 355, but inasmuch as

the questions therein presented were identical with certain of the issues involved in Docket No. 3151, with respect to all of which the Cotton Belt and the Chicago, Peoria & St. Louis Railroad Company, as well as the railway, had been afforded an abundant opportunity to be heard, the cases were considered as a unit.

On April 20, 1914, the Commission, being still engaged in the consideration of the matters jointly involved in Docket No. 3151 and I. & S. Docket No. 355, suspended the absorptions for a further period of 6 months, or until November 7, 1914.

12. *Final report of Commission*—On July 10, 1914, prior to the expiration of the second period of suspension, the Commission filed its third and final report in the premises. *Manufacturers' Railway Co. et al.* v. *St. Louis, Iron Mountain & Southern Ry. Co. et al.*, No. 3151; *Investigation and Suspension Docket No. 355, Absorption of Switching Charges at St. Louis, Mo.*, 32 I. C. C., 100; Record 142, p. 68. The Commission said in this report, Record 142, pp. 71–73, 74:

> In our supplemental report we expressed the opinion that from the evidence before us a reasonable division to the complainant railway out of any joint rate which might be established between it and its trunk line connections would be perhaps not to exceed $2 a car. *Upon further consideration we express the view that, subject to any necessary modification thereof upon further hearing with respect to divisions, if the necessity for such further hearing shall later arise, the division accruing to the*

complainant railway should not exceed $2.50 a car. [Italics ours.] * * *

As we herein affirm the findings and conclusions contained in our supplemental report, we shall proceed in connection with this report to enter an appropriate order. It will require the establishment and maintenance by complainant railway and its trunk line connections, defendant herein, of maximum joint rates to and from points on the complainant railway which shall not exceed in amount the trunk lines' rates to and from St. Louis by more than $2.50 a car. Then, whether the carriers in the through route establish rates on that maximum basis, or, through the voluntary agreement of the trunk lines, on a basis not higher than their St. Louis rates, upon failure of the trunk lines and the complainant railway to agree upon the proper basis of division thereof, and upon request to us so to do, we shall fix the divisions, upon further investigation, as provided in the act.

If that inquiry shall confirm our present impression that $2.50 a car is a reasonable division to the complainant railway, we shall grant it that amount. If, on the other hand, we shall be convinced by the evidence that $2.50 a car is too much or not enough, we shall fix the amount accordingly. Or, in case we are not asked by the carriers to fix the divisions, upon proper cause appearing, we may, in our discretion, institute an inquiry upon our own motion, under those provisions of the act which forbid the giving or receiving of rebates or undue concessions directly or

indirectly by any device whatsoever, having in mind particularly in connection therewith the fact of the common ownership of railway and brewery association stock. * * * Were the object of the proceeding to secure bona fide joint rates for the benefit, primarily, of the complainant railway's shipping public, the complainant railway could just as easily, and in procedure more properly, have been named with the trunk lines as a codefendant in the through route in a complaint brought and prosecuted exclusively by its shippers as a body, including certainly and conspicuously, because of its greater interest in the outcome, the brewing association. It is significant as bearing upon this latter thought that, following the promulgation by us of our supplemental report, the complainant railway canceled all its concurrences in the trunk lines' tariffs, thereby rendering impossible compliance by the trunk lines with the prayer of its own petition, since tariffs naming joint rates must, under the act and our tariff regulations, show as concurring therein every common carrier in the through route. * * *

We desire to make plain herein, as we endeavored to do in our supplemental report, that we are asked in this proceeding to establish these joint rates on the St. Louis basis by affirmative order in a contested case. We merely say in response to that request that this is something which we can not upon this record do, and that if the trunk lines elect voluntarily to establish joint rates on that basis instead of on the maximum basis herein

prescribed, the division thereof which they may lawfully pay and the complainant railway lawfully receive shall not, in view of the common ownership of the complainant railway and Anheuser-Busch Brewing Association stock, be more than is just and reasonable for the service which the complainant railway performs.

* * * * *

In Investigation and Suspension Docket No. 355 is involved the suspension of the operation of tariffs by which certain of the trunk lines defendant in 3151 propose to restore the former allowances of $4.50 a car to the Manufacturers' Railway. The findings and order in 3151 dispose of the questions involved in I. & S. 355. We shall therefore by order direct that the tariffs under suspension in the latter inquiry be canceled forthwith.

13. *Order of Commission*—The Commission thereupon ordered, Record 142, pp. 77, 78, that—

* * * the above-named defendants and the Manufacturers' Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required, on or before January 1, 1915, to cease and desist from charging, demanding, collecting, or receiving their present rates on traffic moving in through transportation between points on the line of said Manufacturers' Railway Company and points on the lines of defendants in states other than Missouri, to the extent that said rates exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and

the same points in states other than Missouri, by more than $2.50 per car.

It is further ordered, That the above-named defendants and the Manufacturers' Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required to establish and put in force, on or before January 1, 1915, and to maintain in force thereafter for a period of not less than two years, and apply to said traffic, rates which shall not exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and points in states other than Missouri, by more than $2.50 per car.

* * * * *

It further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the carriers respondent herein and designated in said tariffs be, and they are hereby, notified and required to cancel, on or before November 7, 1914, the rates, charges, regulations, and practices stated in the schedules specified in said orders of suspension.

14. *Extension of St. Louis rates to points served by railway*—As permitted by the foregoing order of the Commission, all but one of the trunk lines, on January 1, 1915, extended their St. Louis rates to industries served by the railway, and those rates are still in effect.

15. *Injunction proceedings in district court*—On December 10, 14, 1914, the railway, the Cotton Belt, the brewery, and other shippers served by the railway, instituted proceedings in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, to annul the orders of the Commission of April 20, and July 10, 1914, as hereinabove described.

16. *Hearing before examiner appointed by district court*—On February 15–18, 1915, voluminous testimony was introduced on behalf of the railway at St. Louis, Mo., before a special examiner appointed by the district court.

17. *Argument in district court*—On March 12–13, 1915, the cases were argued and submitted jointly to Circuit Judges Walter H. Sanford and Elmer B. Adams and District Judge David P. Dyer, sitting as the District Court of the United States for the Eastern Division of the Eastern District of Missouri, and were by those judges taken under advisement, no injunction being granted.

18. *Decree of district court and appeal therefrom*—On March 26, 1915, an order was entered by the district court in each case dismissing the bill of complaint at the cost of complainants, respectively, and from those decrees the railway, the Cotton Belt, the brewery, and other shippers appealed.

19. *Cancelation of suspended schedule providing for absorption of railway's switching charges*—The effective date of the cancelation order of July 10, 1914, by subsequent orders of the Commission having

been extended to April 1, 1915, the Cotton Belt and the Chicago, Peoria & St. Louis Railroad Company on that date canceled the items in their respective tariffs providing for the absorption of the switching charges of the railway.

QUESTIONS INVOLVED.

I. Did the jurisdiction of the district courts extend to the issuance of an injunction to restrain the Commission's order of July 10, 1914, merely because the Commission therein did not fix the divisions of the through rate or require the trunk lines to absorb the switching charges of the railway?

II. Was the order of July 10, 1914, invalidated by the "increased rates" provision of section 15 of the act to regulate commerce?

III. Was the order of July 10, 1914, invalid as discriminating against the railway and its shippers?

IV. Was the order of July 10, 1914, invalid as repugnant to the decision of this court in the *Terminal Railroad Association case*, 224 U. S. 383?

V. Was the order of July 10, 1914, invalid because the Commission therein did not award reparation to the railway and its shippers?

VI. Was the order of April 20, 1914, further suspending for 6 months a tariff already suspended for 120 days, invalid because the Commission did not rehear in I. & S. Docket No. 355 the same evidence which it had already heard in Docket No. 3151, of which I. & S. Docket No. 355 was an integral part?

VII. Was the order of July 10, 1914, invalid be-

cause the Commission did not find, as a condition precedent thereto, that payments to the railway of $4.50 per car would be so excessive and unreasonable as to constitute a rebate to or discrimination in favor of the common owners of the railway and the brewery?

VIII. Was the order of July 10, 1914, invalid as depriving the appellants of their property without due process of law in violation of the fifth amendment to the Constitution of the United States?

IX. Is it within the province of any court, in reviewing an order of the Commission, to consider evidence not presented to the Commission?

ARGUMENT.

I.

The district court could not lawfully have set aside the order of July 10, 1914, merely because the Commission did not therein fix the divisions of the through rate or require the trunk lines to absorb the switching charges of the railway.

The railway asked the district court to set aside the order of July 10, 1914, not because the Commission had required therein the doing of certain things but because the Commission did not therein fix divisions and award reparation. In other words, it challenged not what the Commission had done but what it had declined to do.

A. The district court had no power to make an order with respect to divisions nor to require the Commission to make an order with respect thereto which the Commission had not made or which it had declined to make, negative decisions of the Commission not being reviewable by any court.

The jurisdiction of the district court was limited to a consideration of the validity of the *order* which

the Commission had made, and it had no jurisdiction to prescribe an order which the Commission had not made or which it had refused to make. This proposition was established by the decision of this Court in *Procter & Gamble* v. *United States*, 225 U. S. 282.

Appellant in that proceeding had complained to the Commission with respect to certain demurrage regulations applied by certain carriers to its private cars, and had charged that such regulations were unjust, oppressive, and discriminative, and in contravention of the law. The Commission, after hearing, concluded that the rules in question were consistent with the act, and declined to direct their cancelation. The company thereupon sought to have the Commerce Court annul the action or nonaction of the Commission whereby its application for relief had been denied, but the Commerce Court, having assumed jurisdiction of the case, dismissed the petition *on its merits*. On appeal to this Court it was held that the Commerce Court had erred in assuming jurisdiction of the cause, which was thereupon remanded to that court to be dismissed *for want of jurisdiction*.

The Chief Justice, speaking for this Court and defining the issue upon which the case was to be decided, said, p. 292:

> Is the authority of the Commerce Court confined to enforcing or restraining, as the case may require, affirmative orders of the Commission, or has it the power to exert its own judgment by originally interpreting

> the administrative features of the act to regulate commerce and upon that assumption treat a refusal of the Commission to grant relief as an affirmative order and accordingly pass on its correctness?

In consideration of the issue so defined, the Chief Justice, after reviewing the jurisdictional provisions of the act creating the Commerce Court, continued, pp. 293, 296–297:

> Giving to these words their natural significance, we think it follows that they confer jurisdiction only to entertain complaints as to affirmative orders of the Commission; that is, they give the court the right to take cognizance when properly made of complaints concerning the legality of orders, rendered by the Commission and confer power to relieve parties in whole or in part from the duty of obedience to orders which are found to be illegal. * * * In the long interval which intervened between 1887, when the act to regulate commerce was enacted, and June 18, 1910, when the Commerce Court act was passed, we have learned of no instance where it was held or even seriously asserted that as to subjects which in their nature were administrative and within the competency of the Commission to decide there was power in a court, by an exercise of original action, to enforce its conceptions as to the meaning of the act to regulate commerce by dealing directly with the subject irrespective of any prior affirmative command or action by the Interstate Commerce Commission.

All the power vested in any court to review the action of the Commission was vested in the Commerce Court. The power of the Commerce Court was, by the act of October 22, 1913, providing for its abolition, "transferred to and vested in the several district courts of the United States," and the powers so delegated constitute the only authority existing in such district courts to review judicially the action of the Commission. Hence if the Commerce Court, endowed with a plenary power to review the judgment of the Commission in so far as such power has been reposed in any court, was impotent even *to pass upon* the propriety of a negative decision by the Commission, clearly no court to which the power of the Commerce Court has been transferred could exercise that function.

In *Hooker* v. *Knapp*, 225 U. S. 302, the petitioner had filed a suit to annul an order of the Commission because the latter thereby had granted only partial relief or, in other words, had refused to make an order as extensive as had been prayed. This Court held that the case was controlled by its decision in the *Procter & Gamble case*, and that the courts had no jurisdiction to review the action of the Commission in refusing relief.

To the same effect also are the decisions of the Commerce Court in *Anaconda Copper Mining Company* v. *United States*, Opinion No. 54; *Crane Iron Works* v. *United States*, Opinion No. 55; *Chamber of Commerce of Augusta* v. *United States*, Opinion No. 65;

and *International Salt Company of Illinois* v. *United States*, Opinion No. 66.

No *duty* devolved upon the Commission to prescribe divisions as requested in the petition of appellants in Docket No. 3151. Section 15 of the act to regulate commerce, in this connection, provides that:

> Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

The Commission, in the instant case, has observed the foregoing provisions of section 15. In its second report, Record 142, p. 54, it expressed the opinion "that the divisions of the joint rates accruing to the railway should not exceed $2 per car," and stated further in the same opinion, Record 142, p. 59, that it regarded the then present allowances to the railway, averaging "slightly above $4.50 per car, as effecting unlawful results." In its third report also, Record 142, p. 71, it adverted to the opinion theretofore expressed that "a reasonable division to the complainant railway out of any joint rate which might be established between it and its trunk line connections would be perhaps not to exceed $2 per car," but, after reserving for further consideration

the entire matter of divisions, said, Record 142, p. 71:

> In our supplemental report we expressed the opinion that from the evidence before us a reasonable division to the complainant railway out of any joint rate which might be established between it and its trunk line connections would be perhaps not to exceed $2 a car. Upon further consideration we express the view, that, subject to any necessary modification thereof upon further hearing with respect to divisions, if the necessity for such further hearing shall later arise, the division accruing to the complainant railway should not exceed $2.50 a car.

The Commission further declared its purpose, Record 142, p. 72, if it should "be convinced by the evidence that $2.50 a car is too much, or not enough," to "fix the amount accordingly."

In other words, the Commission, in the first instance, left to the carriers themselves, as intended by the act, the determination of the divisions which should be allowed by the trunk lines to the railway out of the rates prescribed by the Commission. In this connection, however, the Commission, recognizing its duty under the statute, declared its willingness and purpose, in event of a disagreement among the carriers as to the matter of divisions, to make a further investigation of that question, with a view to the allowance of such divisions as would compensate the railway for the services which it performs. And in pursuance of the Commission's duty, as de-

fined by this court in the *Tap Line cases*, 234 U. S. 1, 29, and in the *O'Keefe case*, 240 U. S. 294, it condemned in advance any effort on the part of the trunk lines to effect "unlawful results" by allowing to the railway any more than just compensation for the services actually performed.

B. The primary jurisdiction of the Commission in the matter of rates is plenary and exclusive.

In *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 444, this Court, speaking through the present Chief Justice, and referring to the cases of *Cincinnati, N. O. & T. P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184; *Louisville & Nashville R. Co.* v. *Behlmer*, 175 U. S. 648; and *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 190 U. S. 273, said:

> It was pointed out that by the effect of the act to regulate commerce it was peculiarly within the province of the Commission to primarily consider and pass upon a controversy concerning the unreasonableness *per se* of the rates fixed in an established schedule. It was therefore declared to be the duty of the courts, where the Commission had not considered such a disputed question, to remand the case to the Commission to enable it to perform that duty, a conclusion wholly incompatible with the conception that courts, in independent proceedings, were empowered by the act to regulate commerce, equally with the Commission, primarily to determine the reasonableness of rates in force through an established schedule.

In harmony with that conclusion are the decisions of this Court in *Illinois Central R. Co. et al.* v. *Interstate Commerce Commission*, 206 U. S. 441, 460; *Interstate Commerce Commission* v. *Illinois Central R. Co.*, 215 U. S. 452, 470; *Baltimore & O. R. Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481, 493, 494–495, 498; *Interstate Commerce Commission* v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88, 110; *Robinson* v. *Baltimore & O. R. Co.*, 222 U. S. 506, 511; *Procter & Gamble* v. *United States*, 225 U. S. 282, 297; *United States* v. *Pacific & Arctic Co.*, 228 U. S. 87, 108; *Mitchell Coal Co.* v. *Pennsylvania R. Co.*, 230 U. S. 247, 257, 258; and *Pennsylvania R. Co.* v. *International Coal Co.*, 230 U. S. 184, 196.

In the *Precooling case*, 232 U. S. 199, 221, the order of the Commission was assailed because it had allowed precooling chares of only $7.50 per car, instead of $30.00 per car, as claimed by the carrier. Referring to the jurisdiction of the Commission in such cases, this Court said:

> All these are matters committed to the decision of the administrative body, which, in each instance, is required to fix reasonable rates and establish reasonable practices. *The courts have not been vested with any such power. They can not make rates. They can not interfere with rates fixed or practices established by the Commission unless it is made plainly to appear that those ordered are void.* [Italics ours.]

In *Loomis et al.* v. *Lehigh Valley R. Co.*, 240 U. S. 43, 50, this Court said:

> An adequate consideration of the present controversy would require acquaintance with many intricate facts of transportation * * *. And the preservation of uniformity and prevention of discrimination render essential some appropriate ruling by the Interstate Commerce Commission before it may be submitted to a court.

The order of the Commission is limited to the establishment of through routes and maximum joint rates. That order alone is open to review. If the railway or its shippers should desire to bring the matter of divisions before the Commission that may be done in an appropriate proceeding, but until the Commission shall have acted it is not within the province of any court to enter any order in the premises.

In *Interstate Commerce Commission* v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88, 110, this Court said:

> The order of the Commission besides is strictly limited. It was intended to determine nothing, and it determines nothing but that the through rates on Atlantic seaboard shipments to the Missouri River cities are too high. That order is alone open to review. Whether other persons, cities, or areas of territory have grounds of complaint, the way is open by application to the Commission for inquiry and remedy. In that inquiry

> many elements may enter upon which the judgment of the Commission should first pass and of which the courts should not be called upon in advance to intimate an opinion. The reasons for this we have indicated, and they will be found at length in the cases which we have cited.

In *United States et al.* v. *Merchants' & Manufacturers' Traffic Association of Sacramento et al.*, 242 U. S. 178, 188, this Court, referring to the course pursued by the appellees in that case, observed:

> *They mistook their remedy.* To permit communities or shippers to seek redress for such grievances in the courts would invade and often nullify the administrative authority vested in the Commission; * * *. [Italics ours.]

II.

The order of July 10, 1914, is not invalid because of the "increased rates" provision of section 15.

Counsel for appellants contend that the cancelation of the trunk line tariffs absorbing the switching charges of the railway constituted an "increase" in rates, and argue that the order of July 10, 1914, is void because the Commission did not require the carriers to prove the reasonableness of such increased rates. The fallacy of this contention, however, is apparent from the fact that the Commission not only did consider the reasonableness of the absorptions, but expressly found that they were unreasonable, and pursuant to that finding ordered the carriers to establish rates applicable to and from all points served by the railway not in excess of $2.50 per car higher than the St. Louis rate.

In support of their contentions that the Commission did not consider the reasonableness of the so-called "advanced rates" the appellants quote extracts from the reports of the Commission which refer, not to the reasonableness of the absorptions, allowances, or divisions to the railway, but to the *separate* charges of the railway and the *separate* rates of the trunk lines. The reasonableness of these separate rates and charges presents an entirely different question from that of the reasonableness of the absorptions, allowances, or divisions to the railway. The question as to whether or not the railway might increase its rates to shippers, separately and apart from the consideration of the trunk line rates, was not an issue before the Commission. The prayer was for the establishment of joint through rates and that prayer was granted. Upon the question as to what amount of the through rate the railway should receive, the Commission expressed the view that any division to it should not exceed $2.50 per car. The Commission indicated further, however, that it would hear additional evidence upon this subject if the railway or other interested parties should so desire and that it would enter an order if the carriers should be unable to agree.

It should be noted, in this connection, that if the reasonableness of the separate rates of the railway and the trunk lines had been in issue, the burden of justifying the assumed increase would have been upon the railway, as well as upon the other carriers, under section 15 of the act, and the railway can not

reasonably complain that its rights have been infringed, in that the Commission did not require it affirmatively to prove that it was acting within its rights.

III.

The order of July 10, 1914, is not invalid because, as appellants contend, it induces discrimination against the railway and its shippers.

A. The findings of the Commission as to the absence of discrimination were not reviewable by the district court.

It is now well settled that the findings of the Commission as to matters of discrimination, when supported by substantial evidence, are conclusive and are not reviewable by any court. In *Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 170, it was said:

> As the third section of the act, which forbids the making or giving any undue or unreasonable preference or advantage to any particular person or locality, does not define what, under that section, shall constitute a preference or advantage to be undue or unreasonable, * * * it can not be doubted that whether, in particular instances, there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of the carriage have been substantially similar or otherwise, are questions of fact, * * *.

In *United States* v. *Louisville & N. R. Co.*, 235 U. S. 314, 320, this Court said:

> In view of the doctrine announced in *Interstate Com. Com.* v. *Illinois Cent. R. R.*, 215

U. S., 452; *Interstate Com. Com.* v. *Delaware, L. & W. R. Co.*, 220 U. S. 235; *Interstate Com. Com.* v. *Louisville & Nashville R. R.*, 227 U. S. 88, it plainly results that the court below in substituting its judgment as to the existence of preference for that of the Commission on the ground that where there was no dispute as to the facts it had a right to do so, obviously exerted an authority not conferred upon it by the statute. It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which, from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed. *East Tenn., etc., Ry. Co.* v. *Interstate Com. Com.*, 181 U. S. 1, 23–29. And the amendments by which it came to pass that the findings of the Commission were made not merely *prima facie* but conclusively correct in case of judicial review, except to the extent pointed out in the *Illinois Central* and other cases, *supra*, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below.

The contention of appellants that the order of the Commission is unsupported by the evidence is refuted by an examination of the more than 400 pages embraced within the abstract of evidence taken before the Commission, Record 142, pp. 447–853, and

to the numerous exhibits filed with the Commission. The district court, with this evidence before it, could not have reached a conclusion at variance with that of the Commission without substituting its judgment for the judgment of the Commission. That such a proceeding on the part of the district court would have been in contravention of its jurisdiction is so well established as to need no argument. *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314; *Interstate Commerce Commission* v. *Delaware, Lackawanna & Western R. Co.*, 220 U. S. 235, 255; *Interstate Commerce Commission* v. *Alabama Midland Ry.*, 168 U. S. 144, 170; *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 92.

It follows, therefore, that the order of the Commission is not invalid because the Commission did not make an order such as the railway thinks it should have made, or did not make some other order which the district court may have thought better than the order which was made. The Commission had to deal with a complicated problem and it determined that problem to the best of its ability, according to the facts before it, and under the authority granted to it by the act to regulate commerce.

B. The order of July 10, 1914, does not discriminate against the railway.

Discrimination necessarily involves unlike relations under like conditions. The terminal association is essentially an operative unit, comprising the terminal facilities of the trunk lines by which it is constituted.

The service performed by the railway is rendered on behalf of its shippers and not in the interest of its trunk-line connections. It is also to be remembered that the terminal association is owned by the trunk lines, while the railway is owned *by the owners of its principal shipper*, the brewery.

The use of the facilities of the terminal association is necessary to the trunk lines, in order to reach the city of St. Louis, whereas the lines of the railway are not accessible to such trunk lines until after they have entered the city via the lines of the terminal association.

This dissimilarity of conditions was pointed out by the president of the railway, in his testimony before the Commission, as follows, Record 142, pp. 52–53:

> If you consider all of the constituent lines of the Terminal Railway Association as one company then it and all other lines have either a cross-river haul or road haul in connection with what switching service they may render and, in addition to that, some passenger service, so that when you try to measure the reasonableness of our rates with the rates of other carriers in St. Louis the parallel is not an exact one, for the reason that our entire revenue is derived from a switching service and these other lines supplement their revenue with other service and parallel comparison can not be made. They have rates in effect that are not remunerative in and of themselves. So has the Manufacturers' Railway. It is necessary sometimes to use certain of your property at a loss in order to encourage the growth of the

> business. In some cases you are forced to do so on account of competition, in other cases you are forced to do so because your rates are fixed by ordinance. Our object is to have our entire schedule return a profit.

In *Louisville & N. R. Co.* v. *United States et al.*, 242 U. S. 60, 74, this Court, holding that the ownership and use of a joint terminal by two or more carriers does not require those carriers to extend the same service to others that they give to themselves, observed:

> We take it that a several use by the roads for this purpose would open no door to a third road. If the title were strictly joint throughout in the two roads, we can see no ground for prejudice in the adoption of the more economical method of a single agency for both, each paying substantially as it would if it did its own work alone.

The particular provisions of the order here under consideration had no relation to divisions payable by the trunk lines to the railway, being limited to the establishment of the maximum by which the rates to and from the industries served by the railway might lawfully exceed the St. Louis rates. The question of divisions was expressly reserved by the Commission for further consideration, if the necessity therefor should arise; and the district court properly declined to usurp the functions of the Commission by comparing the circumstances and conditions surrounding the transpor-

tation service of the railway with the circumstances and conditions of terminal association service, and determining, upon the basis of that comparison and in advance of suspended action by the Commission, the amount of the divisions properly accruing to the railway.

C. The order of July 10, 1914, does not discriminate against the shippers served by the railway.

The order here under consideration permits the trunk lines to apply their St. Louis rates to industries served by the railway and all but one of the trunk lines have filed tariffs on that basis. Hence it is manifest that such shippers have no ground for complaint. Shippers, moreover, are entitled merely to reasonable rates and have no vested right to the continuance of an existing rate.

In the *Willamette Valley case*, 219 U. S. 433, the Southern Pacific Company had had in force for many years rates under which numerous lumber mills had been constructed along its lines. The carrier proposed to increase its rates, and it was conceded that the proposed increased rates were reasonable. It was urged in opposition to the increased rates, however, that the lumber interests had expended large sums of money in reliance upon the rates in effect, and that by reason of this circumstance the carrier was estopped from increasing the rates. This Court, overruling that contention, held that the only question to be considered was as to the reasonableness of the increased rates.

Even if the trunk lines were to file tariffs applying rates to industries along the lines of the railway in excess of the St. Louis rates, but within the limits permitted by the order, such shippers would have no legal ground for objection. While it is true that in that event shippers located on the lines of the railway would be subjected to a disadvantage, as compared with shippers located on the trunk lines, such disadvantage would be due to the disadvantageous location off the rails of the trunk lines. Disadvantages in rates due to such causes do not constitute an undue prejudice or an undue discrimination, either in fact or in law. *United States* v. *Baltimore & O. R. Co.*, 231 U. S. 274. Nor is it the province of the Commission to equalize by rate adjustment dissimilar conditions due to location. *Page Milling Company* v. *Norfolk & W. Ry. Co.*, 30 I. C. C. 605, 612; *Railroad Commissioners* v. *Atchison, T. & S. F. Ry. Co.*, 22 I. C. C. 407, 410; *Wichita Business Association* v. *Atchison, T. & S. F. Ry. Co.*, 30 I. C. C. 45, 55. The act to regulate commerce does not attempt to equalize fortunes, opportunities, or abilities. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46; *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433.

IV.

The order of July 10, 1914, is not invalid because, as appellants contend, it is repugnant to the decision of this Court in the Terminal Railroad Association case, 224 U. S. 383.

Appellants have assigned as error the refusal of the district court to set aside the order of the Commission as being repugnant to the decision of this Court in the *Terminal Railroad Association case*, 224 U. S. 383, wherein it was held that the terminal association, as then constituted, was an illegal combination in restraint of trade. But clearly there is no similarity between that case and the order of the Commission in this case. That was a prosecution under the Sherman Antitrust Act in which no question as to tariffs was involved. The decision of this Court therein was limited to the conclusion that the terminal association was an illegal combination in restraint of trade. The reasoning whereon the findings of the Commission in the instant case were established suggests persuasively a recognition on the part of the Commission that the facilities of the terminal association were for all practical purposes the facilities of the trunk lines forming that association. The view that should be taken of the terminal association from the standpoint of rate regulation was not presented and was not passed upon by this Court further than to say, p. 412, that nothing stated in the opinion should be construed—

> to affect in any wise or at any time the power of the Interstate Commerce Commission

over the rates to be charged by the Terminal Company, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such Commission.

V.

The order of July 10, 1914, is not invalid because, as appellants contend, the Commission did not therein award reparation to the railway and its shippers.

The refusal of the Commission in a particular case to award reparation to a complainant is an act of negation which is not in any case reviewable by the courts. The petition filed in the Commerce Court on behalf of the Procter & Gamble Company, 225 U. S. 288, contained, *inter alia*, a prayer that—

> said defendant railway companies and each of them be required to repay to complainant herein all sums found to have been wrongfully collected by them or any of them under the rule here complained of; * * *.

But this Court, in remanding the case to be dismissed for want of jurisdiction, said, p. 301:

> The general considerations which we have stated establish the error committed by the court below in holding that it had jurisdiction over the claim of the Procter & Gamble Company to recover on a money demand based on the illegality of the demurrage charges alleged to have been wrongfully exacted by the railroad companies.

There was in the instant case no predicate for an award of reparation. Before the Commission can award a certain sum of money as reparation it must find: First, a violation of the act, second, resulting injury to the party claiming reparation, and third, a definite amount of damage suffered. Not one of these prerequisites was shown by the appellants in the case at bar. There was no finding by the Commission of unreasonableness of the separate rates of the trunk lines, undue prejudice or unjust discrimination, the findings being exactly to the contrary, nor was there any proof as to the fact or amount of damages sustained.

As hereinabove noted, a negative order of the Commission is not reviewable by any court, and if the district court had attempted to award reparation to the brewery and other shippers, as prayed for in their petition, it would have usurped the functions of the Commission in determining the reasonableness of the rates involved.

With even less justification may the railway complain of the Commission's refusal to award it reparation, for, even if it should be assumed, for the purposes of the argument, that a carrier which has shipped its property over the rails of another carrier, and which has paid thereon an unreasonable rate, may be entitled to an award of reparation, clearly a carrier which has made no shipments is not lawfully entitled to reparation. The railway has not proved, and it is unlikely that it would claim, that it has made any

shipments, and in the absence of such showing there was no basis whatever for an award of reparation.

The question before the district court was as to the validity of the order which the Commission had entered; not the validity or the invalidity of an order which it had not made or which it had declined to make. The district court properly refused therefore to consider as a defect in the order of the Commission its refusal to award reparation to the appellants.

VI.

The order of April 20, 1914, further suspending for 6 months a tariff already suspended for 120 days is not invalid because as appellants contend the Commission did not again hear in I. & S. Docket No. 355 the same evidence which it had already heard in Docket No. 3151, of which I. & S. Docket No. 355 was an integral part.

In the proceeding before the Commission the railway contended that it was entitled to an allowance under section 15. The Cotton Belt, one of the defendants in that proceeding, alleged, in its answer, Record 142, pp. 378–379, that—

> * * * it canceled the said tariff for the reason that it was advised that the allowances that it heretofore made to the Manufacturers' Railway Company were illegal, and not permitted under the law for the reason that it was advised, believed, and still believes that the Manufacturers' Railway Company is merely an industrial or tap line, and, under the law, not entitled to any part of the through rate from or with this defendant.

The Cotton Belt further alleged in its answer that if the railway was entitled to an allowance, "it is not entitled to the allowance heretofore paid to it" and that "the allowance given to the Manufacturers' Railway Company was unreasonable, excessive, and unjust."

After the case had been reargued before the Commission, and while it was under consideration by the Commission, the Cotton Belt filed its tariff providing for the absorption of the railway's switching charges up to $4.50 per car. Then, after the Commission had entered its order of July 10, 1914, the Cotton Belt joined the railway in a petition to the district court to annul that order because the Cotton Belt desired to pay $4.50 per car to the railway.

This Court in the *Tap Line cases*, 234 U. S. 1, 28, 29, held that it is not only within the power of the Commission, but that it is its duty in cases of this kind, to see that allowances or divisions are not so undue or so unreasonable as to result in rebates. In this connection, it was said:

> It is not only within its power but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the

> province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

The Commission, in the fulfillment of its duty as so defined by this Court, held a full original hearing and a full supplemental hearing on the matters involved in Docket No. 3151. At both of these hearings the railway and the Cotton Belt, parties to that proceeding, were afforded an abundant opportunity to be heard. The issues before the Commission directly involved all matters pertaining to the rates to be applied to transportation to and from all points along the lines of the railway. After the supplemental hearing, the Commission was justified in assuming *conclusively* that the appellants had submitted with respect to those issues all the evidence which might be adduced.

A. The canceled tariff of the Cotton Belt was controlled by the order in Docket No. 3151.

When the Cotton Belt, in anticipation of a decision by the Commission as to the issues already submitted, filed a tariff predetermining one of those issues, the Commission properly suspended that tariff for a period of 120 days, as provided by section 15 of the act to regulate commerce. Thereafter the record already prepared in Docket No. 3151, being determinative of the issues involved in I. & S. Docket No. 355, both dockets were considered together as a unit.

On March 20, 1914, the Commission, finding that it would be impossible to determine within the original period of suspension the issues jointly involved in Docket No. 3151 and I. & S. Docket No. 355, further suspended the tariff of the Cotton Belt for a period of six months from the expiration of the 120 days originally prescribed.

Appellants' contention in this proceeding might be compared to the case which would be presented if A were to bring suit against B, C, D, and E to enjoin them from erecting a building on his property. Suppose B, after hearing and before the stated case should be determined by the court, in an effort to predetermine for himself the issues then before the court, should proceed to the construction of such building. If B should be restrained by the court pending final determination of the cause, and if thereafter A should prevail, could B be heard to deny the validity of the order preliminary to the final decision on the ground that he had had no hearing with respect thereto? Clearly it would not be necessary for the court to hear the evidence all over again. Then, too, after final decision the validity of the interlocutory order would become immaterial, for the reason that B would be bound by the final order.

The law looks to substance and not merely to technical forms; and the mere fact that the case involving the order of suspension was given a different number from that of the proceeding of which it was a part does not constitute the cancelation order a distinct and separate case.

Surely, then, it can not reasonably be contended that the Commission should have reheard the evidence already before it merely because the Cotton Belt had attempted to prejudge in its own behalf the questions involved. Section 15 of the act providing for the suspension of tariffs has no application to a situation of this kind, involving a tariff filed *after hearing* but before decision by the Commission.

If a question is before the Commission as to the reasonableness of an existing rate, and a party to the proceeding, after hearing, but before decision by the Commission, files a tariff containing provisions inconsistent with the findings thereafter announced by the Commission, can such carrier reasonably insist upon the Commission hearing all the evidence anew? Under such a procedure no cause before the Commission would ever be concluded, and every case submitted would finally comprise an infinite number of subsidiary cases.

The Cotton Belt tariff suspended by the Commission, involving as it did the very question under consideration and undecided by the Commission, was *per se* invalid. And the contention on behalf of the Cotton Belt that it had been denied a hearing in the premises is refuted by the record of the hearing already had.

B. The order of April 20, 1914, suspending the tariff, was superseded by the order of July 10, 1914, canceling the tariff, and it is therefore unnecessary for this Court to pass upon the validity of the suspension order.

The order of April 20, 1914, extended the operation of a suspension order previously entered by the Commission and the validity of which is not assailed by the appellants. Prior to the expiration of the second period of suspension the Commission, having concluded its investigation of the matters jointly involved in Docket No. 3151 and I. & S. Docket No. 355, entered its order of July 10, 1914, directing the cancelation of the suspended tariffs.

It is therefore apparent that even if the Commission had exceeded its authority under the act in suspending the tariff for more than 120 days without an *independent* hearing in the premises—though this contention of appellants is specifically denied—the validity or invalidity of its action in so doing became merely a moot question upon the effective date of the order of July 10, 1914. In other words, after the carriers had canceled the tariff which had been suspended by the order of April 20, 1914, their grievance, if any, was not that the tariff was under suspension but that it had been canceled as directed by the Commission in its order of July 10, 1914.

Even, moreover, if this Court should hold that the district court erred in declining to annul the order of April 20, 1914, a reversal of the judgment of that court would not revive the canceled tariff.

It is therefore respectfully submitted that the validity or the invalidity of the order of April 20,

1914, presents merely a moot question which may not properly be considered by this Court, and that the only issues determinable in the instant case are those with respect to the validity or the invalidity of the order of July 10, 1914.

It is unnecessary to consider whether or not the hearing should have been begun within 120 days for the reason that the records show positively that a full hearing had been granted to the Cotton Belt prior to the entry of the cancelation order.

VII.

The order of July 10, 1914, is not invalid because, as appellants contend, the Commission did not find, as a condition precedent thereto, that payments to the railway of $4.50 per car would be so excessive and unreasonable as to constitute a rebate to or discrimination in favor of the common owners of the railway and the brewery.

The appellants contend that the order of July 10, 1914, directing the cancelation of the Cotton Belt tariff, providing for the absorption of the switching charges of the railway up to $4.50 per car, is invalid because the Commission, as a condition precedent thereto, did not find that such payments were so excessive and unreasonable as to constitute a rebate to or discrimination in favor of the common owners of the railway and the brewery.

It is submitted that such a finding by the Commission was not prerequisite to the validity of the order in question, but, even if it were, an examination of the original and supplemental reports of the Com-

mission can leave no doubt as to its conclusion that in view of the common ownership of the railway and the brewery any payment to the railway in excess of $2.50 per car would be regarded as a bonus to the railway. The maximum payment so permitted, moreover, was to constitute a *division* of the through joint rate prescribed by the Commission, and in view of the Commission's finding that the railway is a common carrier, the payment of $4.50, or of any other amount, as an *allowance* or *absorption* was prohibited by the order.

In this connection it is important to observe the distinction between "allowances," "divisions," and "absorptions," which may be defined, respectively, as follows: An *allowance* is a payment by a carrier to a shipper for facilities furnished or for services rendered by the shipper on behalf of the carrier. A *division* is the proportion of a joint through rate accruing to each carrier participating therein. An *absorption* is the assumption by a common carrier and the inclusion in a rate of a charge incidental to a transportation service.

Prior to the entry by the Commission of the order here under consideration, there had been no joint rate and there could, of course, be no division of that which did not exist, so the Cotton Belt and other trunk-line carriers had *absorbed* the charges of the railway. The order of July 10, 1914, required the carriers to establish through routes and joint rates and the railway, as a participant in such rates, was thereafter entitled to a *division* thereof. It was this

division which the Commission in definite terms declared should be restricted to just compensation only for what the railway actually does. And that the Commission was acting in the fulfillment of its statutory duty, in condemning as an unlawful concession any division to the railway in excess of that limitation, was clearly established by the decision of this Court in the case of *O'Keefe* v. *United States*, 240 U. S. 294. In that case, the Commission had fixed upon a mileage basis the divisions payable to tap lines by trunk-line carriers. A tap line prior thereto had delivered to the appellant carrier a considerable tonnage of lumber furnished by proprietary mills, and had received therefor divisions materially in excess of those permitted on the mileage basis. In order to secure the maximum divisions allowable under the Commission's order, the tap line thereafter diverted its traffic to other trunk lines on either side beyond its junction with the New Orleans, Texas & Mexico Railroad, which lines, by reason of its longer haul, were permitted to pay it higher divisions than it might lawfully accept from the appellant. The latter, in order to reclaim the traffic so diverted, undertook by special agreement to pay to the tap line divisions corresponding to those accruing to it on traffic delivered to competitive lines, and the execution of that agreement being precluded by the order of the Commission, sought to enjoin the enforcement of that order. The District Court of the United States for the Eastern District of Louisiana denied an in-

junction and dismissed the petition therefor, and on appeal to this Court that judgment was affirmed.

Just as the trunk line in the *O'Keefe case* attacked the order of the Commission because it was thereby prohibited from paying to the tap line a sufficient amount by way of divisions to secure the traffic which otherwise would be diverted to its competitors, so here the Cotton Belt is complaining, not because any division fixed by the Commission is excessive, but because it has interpreted the decision of the Commission as forbidding its payment to the railway of sufficiently attractive divisions to secure the traffic of the railway.

The Commission, notwithstanding its power as defined in the *O'Keefe case*, has reserved for future consideration, if an occasion therefor should arise, the matter of the divisions properly payable to the railway out of the joint rates provided in the order of July 10, 1914. Until the appellants, in an appropriate proceeding to that end, had applied to the Commission for the establishment of divisions, the district court could not lawfully have granted to those carriers any relief as to the matter of divisions, and its action in refusing so to do and in dismissing the petition of the carriers should be sustained.

VIII.

The order of July 10, 1914, is not invalid because as appellants contend, it deprives them of their property without due process of law, in violation of the fifth amendment to the Constitution of the United States.

The allegation of confiscation is apparently predicated upon the theory that the order of the Commission fixes a maximum joint rate of $2.50 above the St. Louis rate, whereas the railway contends that the joint rate should be upon the basis of the St. Louis rate. Carriers usually predicate a claim of confiscation on an allegation that the regulating body has reduced the rate too much, but here conjectural confiscation is alleged because the Commission by its order permits the rate in question to be higher than the St. Louis rates. In view of the fact, however, that all the trunk lines but one have filed tariffs to industries along the lines of the railway at the St. Louis rate, the matter becomes a moot question in so far as determining the validity of the Commission's order is concerned.

A. Confiscation can not be predicated upon the refusal of the Commission immediately to fix divisions.

The Commission did not by its order deprive the railway of its right to participate in the divisions of the through rate. On the contrary, the Commission expressly recognized and asserted that right.

It can not be said that the Commission fixed too small a division for the railway, because the Commission fixed no division at all. The refusal of the

Commission to fix the division at once is not confiscatory for the further reason that the railway has no right to insist upon the Commission fixing such divisions in advance of a failure of agreement among the carriers.

B. The rates prescribed are not confiscatory.

When, in March, 1910, the trunk lines canceled their allowances to the railway and discontinued absorbing the railway's charges, the latter voluntarily put in force its local rate of $2 per car from the trunk-line termini to points on its own line. The result was that the rate to shippers on the line of the railway was the St. Louis rate plus $2 per car, or a rate in excess of the St. Louis rate by $2 per car.

The terminal joint rates prescribed by the Commission are not less than the combination of the trunk-line rates. On the contrary the rates fixed by the Commission with respect to industries on the lines of the railway are limited only to amounts not in excess of $2.50 per car above the St. Louis rates. In other words, the maximum joint rates fixed by the Commission are permissively higher than the rates previously in effect. If, as the order permits, the carriers should charge the shippers 50 cents per car more than the rate formerly in effect, how can the order be said to be confiscatory?

The contention of the railway is this: That if the Commission *should* fix divisions to the railway at less than $4.50 per car, then the order so made by the Commission would be confiscatory. But such an order has not been made by the Commission, and it

is purely speculative to anticipate what order the Commission will make as to divisions.

The action of the court should not be based upon what the railway charges the Commission will or may do in the future with respect to divisions. When the Commission makes an order in reference to divisions, then, and then only, may that order be reviewed. And until such an order is made the district court would have usurped the functions of the Commission if it should have attempted to determine that question. Clearly, a division which has not been fixed is not to be regarded as confiscatory.

Moreover the district court was not advised as to how much of the business of the railway would be affected by the divisions in question. Such division would not apply to all traffic moving over the lines of the railway; hence that carrier can not reasonably claim sufficient revenue from the traffic to which that rate applies to yield it a fair return upon his entire investment. *Louisville & Nashville R. Co.* v. *Garrett*, 231 U. S., 298, 315.

The Cotton Belt can not reasonably complain of the order as confiscatory merely because it may not permit that carrier to pay to the railway as much as it might wish to pay. Clearly, moreover, an order which would save to the Cotton Belt $2 per car on all traffic delivered to or received by it from the railway can not be deemed to be confiscatory.

In *O'Keefe* v. *United States*, 240 U. S. 294, 304, this Court said:

The final contention, which is that the Commission's order in effect deprives the New Orleans, Texas & Mexico of its property without due process of law, by denying to it the right to contract and compete for traffic originating on the line of the Louisiana & Pacific, is transparently unsound. The trunk line has no constitutional right to build up its business by paying bonuses or rebates that have been forbidden by act of Congress for considerations affecting the public welfare.

IX.

In reviewing an order of the Commission, the courts may not properly consider evidence not presented to the Commission.

1. *Decisions prior to 1906*—Under the act to regulate commerce as amended prior to 1906, the conclusions of the Commission on the facts in any given case were regarded merely as *prima facie* findings. Thus, in *Railroad Company* v. *Penn Refining Company*, 137 Fed. 343, 353, it was held that "additional evidence may be put in by either party and the duty of the court is to decide * * * upon the entire body of the evidence." Decisions to a similar purport were announced in *Kentucky & Indiana Bridge Company* v. *Louisville & Nashville Railroad Company*, 37 Fed. 567, and *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. Ry. Co. et al.*, 64 Fed. 981.

In *Cincinnati, N. O. & T. P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, 196, this Court expressly disapproved of the practice therein

observed by the carriers whereby they had withheld from the Commission the larger part of their evidence and had submitted it in the first instance to the circuit court. In this connection, it was said:

> The Commission is an administrative board, and the courts are only to be resorted to when the Commission prefers to enforce the provisions of the statute by a direct proceeding in the court, or when the orders of the Commission have been disregarded. The theory of the act evidently is, as shown by the provision that the findings of the Commission shall be regarded as *prima facie* evidence, that *the facts of the case are to be disclosed before the Commission*. We do not mean, of course, that either party in a trial in the court is to be restricted to the evidence that was before the Commission, but that the purposes of the act call for a full inquiry *by the Commission* into all the circumstances and conditions pertinent to the questions involved. [Italics ours.]

2. *Decisions since 1906*—Since the amendment of 1906, however, it has become an established rule of law that the findings of the Commission in any given case are final and conclusive, provided only that such findings are supported by *substantial evidence*. As said by this Court in *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 550:

> The law makes the Commission's finding on such facts conclusive. There was, then, under the statute, nothing for the companies

to do except to comply with the order—or act on the suggestion thrown out in the Commission's answer, and apply for a rehearing, in reliance upon its power and duty to modify its order if the new evidence warranted such change.

In the case of *Louisiana & P. Ry. Co. et al.* v. *United States et al.*, 209 Fed. 244, 252, a motion was offered on behalf of the Commission to strike out certain testimony taken by the Commerce Court on the ground that the issues in the case were determinable exclusively by the record as made before the Commission. In granting this motion, the Commerce Court held:

> Whatever may be the rule as to the admission of additional evidence when an order of the Commission is attacked as making a rate that is confiscatory, we are of the opinion that when, as in these cases, the real basis of the complaint is that the findings of the Commission are unsupported by substantial evidence or are arbitrary, as based upon distinctions shown by the evidence to be improper, the correctness of such allegations can be tested only by the evidence that was before the Commission.
>
> If, after the hearing by the Commission and either before or after its order shall have been entered, new evidence should be discovered, or a change should have taken place such as should cause the Commission to modify or reverse its findings and order, the proper remedy is to apply for a rehearing, to present a supplemental complaint, or to file a new com-

> plaint before the Commission. Any and all evidence bearing upon the questions of fact involved in the matters adjudicated should, however, first come before the Commission in order that it may be able to determine the ultimate facts in the case.

In the case of *Louisville & Nashville R. Co.* v. *United States*, 218 Fed. 89–90, the United States District Court for the Western District of Virginia declined to consider certain evidence offered on behalf of the carrier upon which the Commission had not passed, on the ground that—

> the statute contemplates that the Interstate Commerce Commission shall not only have power to determine as to whether any given rate is reasonable, but shall also have the power to determine as to whether any given rate is confiscatory, and that in a case like the one at bar, if the railroad, the complainant here, is dissatisfied as to the decision of the Interstate Commerce Commission, that it is its duty under the statute (§16a) to apply to the Commission for a rehearing in order that it may offer any additional evidence bearing on the question of the unreasonableness of the rate and as to whether the rate is confiscatory. What I have said is subject to this exception: that if the Commission had refused to hear any testimony that was material on the question as to whether the rates were confiscatory or unreasonable, then this court would be inclined to hear such testimony; but it appearing that no effort has been made on the part of the railroad to present to the Commission this

> additional testimony bearing on the question as to whether the rates were confiscatory, it would not be proper for us to consider evidence of that character, and we will exclude the evidence presented by the complainant and hear only the testimony contained in the record which was before the Commission at the hearing of the case.

A similar conclusion was also reached by the District Court of the United States for the Northern District of Illinois, on February 26, 1915, in the case of *Duluth & Northern Minnesota Ry. Co.* v. *United States*, wherein certain testimony was sought to be submitted on behalf of plaintiff as to the alleged confiscatory nature of certain rates fixed by the Commission.

It will be observed that the fundamental principle laid down in the foregoing cases is that whenever a question as to the reasonableness of rates, divisions, or practices arises, the rate-making body must, in the first instance, pass upon that question. This is just as important where it is claimed that there is new evidence affecting the question of divisions not yet established by the Commission as when rates are before the Commission in the first instance. If a rate has been established by the Commission and put in by the carrier, or if a division has been fixed by the Commission, the carriers having disagreed, and, by reason of evidence arising or discovered after the hearing, the rate or division is claimed to be unreasonable or confiscatory, it is

just as important and as clearly within the principle announced in these cases that the Commission shall first pass upon the evidence and state its conclusion as it is when the rate or division comes up primarily for determination, the reason of the rule being to secure uniformity of action and practice, which can not be secured through original procedure before the courts.

The complexity of the question involved in this proceeding makes it one peculiarly within the province of the rate-making body, to the end that the uniformity insisted upon by this Court in the *Abilene Cotton Oil case*, *supra*, shall be attained.

CONCLUSION.

The railway in its petition filed with the Commission asked for the establishment of through routes and joint rates to points on its line, for a reasonable division of such through rates, and for reparation. The Commission upon consideration of that petition ordered the extension by the respondent carriers to all points served by the railway of joint rates not in excess of $2.50 per car higher than the St. Louis rates, and after expressly authorizing a division to the railway left to the carriers themselves the determination of the amount thereof, reserving for future consideration the adjustment of divisions if the carriers should be unable to agree. The Commission declined to award reparation either to the railway or to any of its shippers

for the reason that there was no evidence before it which would warrant such an award.

It is therefore apparent that the brewery and other shippers served by the railway have received under the Commission's order every advantage to which they have shown themselves entitled. The refusal of the Commission by a compulsory order to give them the benefit of the flat St. Louis rates, as well as its refusal to award them reparation, was a negative decision, and as such was not reviewable by the district court. The question in any event is moot for the reason that all but one of the trunk lines, including the Cotton Belt, have actually extended their St. Louis rates to all points served by the railway.

The railway and the Cotton Belt have asked for the annulment of the order of April 20, 1914, but both those carriers were parties to, and were fully heard in, Docket No. 3151, and as they are bound by the order therein entered, they may not reasonably complain because the Commission did not hear the same evidence again in I. & S. Docket No. 355, which was an integral part of Docket 3151.

The contentions of the appellants therefore resolve themselves into an objection to the Commission's refusal to require the trunk lines to pay out of the joint rates prescribed by the order of July 10, 1914, a division of $4.50 per car. This objection, in so far as the Cotton Belt is concerned, is in effect a complaint that it is prohibited by the order from paying to the railway a sufficient amount by way of

divisions to secure what it conceives to be its share of the traffic controlled by the owners of the railway. Such an objection is clearly foreclosed by the decision of this Court in the *O'Keefe case*, 240 U. S. 294. Nor may the brewery and other shippers served by the railway reasonably complain of the order because of the Commission's refusal therein to compel the trunk lines to pay to the railway a division of $4.50 per car, that grievance, if any, being not their own.

The matter of divisions is exclusively within the primary jurisdiction of the Commission, and the way is open to appellants, in an appropriate proceeding to that end, to ask the exercise by the Commission of that jurisdiction. But until they shall have asked the Commission to fix the divisions which the railway may lawfully receive out of the joint rates provided in the order of July 10, 1914, it is not within the province of any court to exercise that function.

It is therefore respectfully submitted that the district court committed no error in denying injunctions and dismissing the petitions of appellants, and that its judgment accordingly should be affirmed.

JOSEPH W. FOLK,

Counsel for the Interstate Commerce Commission.

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

MANUFACTURERS RAILWAY COMPANY AND St. Louis Southwestern Railway Company, appellants, *v.* UNITED STATES OF AMERICA (AND INTERSTATE Commerce Commission, intervener), appellees.	No. 142.
MANUFACTURERS RAILWAY COMPANY, Anheuser-Busch Brewing Association et al., appellants, *v.* UNITED STATES OF AMERICA (AND INTERSTATE Commerce Commission, intervener), appellees.	No. 143.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

INTRODUCTION.

The two appeals were taken from final decrees denying injunctions and dismissing the petitions on the merits without opinions, Circuit Judge Adams and

District Judge Dyer concurring and Circuit Judge Sanborn dissenting (No. 142, R. 89; No. 143, R. 78).

In No. 142 the suit was brought by Manufacturers Railway and St. Louis Southwestern Railway to set aside and enjoin an order of the Commission, which canceled a new tariff of the Southwestern, by which it proposed to absorb an allowance of $4.50 per car (instead of $2.50 which the Commission found as reasonable) to Manufacturers Railway for switching loaded cars to the connections with the trunk lines (No. 142, R. 77, 78).[1]

In No. 143 the suit was brought by Manufacturers Railway (Anheuser-Busch Brewing Association and others, intervening), to set aside and enjoin an order of the Commission which found that $2.50 per car was the maximum to which Manufacturers Railway was entitled for switching loaded cars to the connections with the trunk lines (No. 143, R. 77, 78).[2]

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[1] In Investigation and Suspension Docket No. 355 is involved the suspension of the operation of tariffs by which certain of the trunk lines defendant in 3151 propose to restore the former allowances of $4.50 a car to the Manufacturers Railway. The findings and order in 3151 dispose of the questions involved in I. & S. 355. We shall therefore by order direct that the tariffs under suspension in the latter inquiry be canceled forthwith.

* * * * *

It further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the carriers respondent herein and designated in said tariffs be, and they are hereby, notified and required to cancel, on or before November 7, 1914, the rates, charges, regulations, and practices stated in the schedules specified in said orders of suspension.

[2] *It is ordered*, That the above-named defendants and the Manufacturers Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required, on or before January 1, 1915,

The original complaint was filed before the Commission in March, 1910 (No. 143, R. 97, 109). After three separate hearings and reports (21 I. C. C. 304, No. 142, R. 25; 28 I. C. C. 93, No. 142, R. 42; and 32 I. C. C. 100, No. 142, R. 68) the Commission, July 10, 1914, entered the orders in controversy (No. 142, R. 77).

THE FACTS.

Anheuser-Busch Brewing Association, with its grain houses, malt houses, warehouses, brewing houses, rice houses, bottling works, repair shops, stables, etc., that make up the brewery plant, covers 35 or 40 city blocks, and embraces 126 acres of land, all closely covered with various structures used for the manufacture and marketing of beer (No. 142, R. 60). Anheuser-Busch controls 42,000 loaded cars annually of its own traffic, or one-thirtieth of all traffic, inbound and outbound, of the great city of St. Louis (21 I. C. C. 311, No. 142, R. 32; 28 I. C. C. 113, No. 142, R. 61). It has a capital stock of $240,000, divided into 480 shares, owned by 15 or 20 stockholders (No. 142, R. 537). Adolphus Busch, his son August A.

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to cease and desist from charging, demanding, collecting, or receiving their present rates on traffic moving in through transportation between points on the line of said Manufacturers Railway Company and points on the lines of defendants in States other than Missouri, to the extent that said rates exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and the same points in States other than Missouri by more than $2.50 per car.

It is further ordered, That the above-named defendants and the Manufacturers Railway Company, according as their various lines or routes may run, be, and they are hereby, notified and required to establish and put in force, on or before January 1, 1915, and to maintain in force thereafter for a period of not less than two years, and apply to said traffic, rates which shall not exceed defendants' rates contemporaneously in effect between St. Louis, Mo., and points in States other than Missouri by more than $2.50 per car.

Busch, and the Shuttler Estate, own 298 shares (No. 142, R. 537). August A. Busch has been connected with Anheuser-Busch about 24 years, is now vice president and a member of the board of directors. (No. 142, R. 536, 537.)

For a number of years following the inception of the enterprise, the inbound raw materials and the outbound products of the brewery were drawn by horse and wagon to and from the tracks of the St. Louis, Iron Mountain & Southern (No. 142, R. 60), the only railroad which then served the brewery (No. 142, R. 351, 352). With the rapid and great growth of the business, additional car space had to be added which was not provided by the Iron Mountain but "which was provided by the individual efforts of Adolphus Busch, and, *not thinking to build a railroad*, he secured franchises in the City of St. Louis which enabled *him* to build certain trackage and to operate them, he thought" (No. 142, R. 351).

Manufacturers Railway Company was incorporated in 1887, to construct and operate a railroad two miles in length, on certain streets in St. Louis. The original capital stock was $25,000; increased in 1905 to $100,000; increased in 1906 to $250,000, and consists of 250 shares (No. 142 R. 30). With the exception of 12 shares owned by the Shuttler Estate, Adolphus Busch and August A. Busch own the whole No. 142, R. 475). Muehlburg is traffic manager of both Manufacturers Railway and Anheuser-Busch (No. 142, R. 509).

George F. Moore, President, Manufacturers Railway, testified: "The same men who control the brewery control the Manufacturers Railway; * * * and it depends upon that man and his administration of those properties whether or not that relationship should ever reach a point where it would become unlawful or a menace" (No. 142, R. 346).

In 1888, Manufacturers' Railway leased its tracks to the Iron Mountain for 10 years (No. 142, R. 888). In 1898 it renewed the lease for 10 years (No. 142, R. 892). In 1908 it declined further to renew the lease and itself took over the operation of the tracks (No. 142, R. 30). It does not handle less than carload freight and has no passenger business (No. 142, R. 31). It owns four locomotives (No. 142, R. 31), and operates the tracks, now about 25 miles in length, 2¼ miles of which are main stems and the remainder are private spurs, team tracks, and yards, of which the trackage within the bottling, Budweiser, and keg departments, and its classification yards, constitute the greater part (No. 142, R. 48). Of the 25 miles of track, all but 2½ miles are within the plant inclosure (No. 142, R. 62). A large part of the tracks are not owned by the railway but are leased to it by Anheuser-Busch (No. 142, R. 61).

December 31, 1908, for the consideration of $2,000 per month, Anheuser-Busch leased to Manufacturers' Railway, for the period of 10 years, certain lands whereon Anheuser-Busch "has laid and in operation certain railway tracks," and "said association further gives and grants to said railway the right and privilege to use and operate the aforesaid sidings

for railway purposes, upon condition, however, *that such use will never interfere with the reasonable use thereof by said association, of which said association shall be the sole and only judge*" (No. 142, R. 887, 888). This lease was subsequently amended by striking out the preference clause (No. 142, R. 348). *Moore* testified, however, that the lease, as changed, "has never served the public any better" (No. 142, R. 343).

The Iron Mountain allowed the Manufacturers Railway and absorbed in the St. Louis rate from $3.50 to $5.50 per car during the 20-year period covered by the lease—1888 to 1908—for all loaded cars switched to and from the Iron Mountain interchange tracks (No. 142, R. 48). On the expiration of the lease the 19 trunk lines (Manufacturers Railway having in the meantime made new additional connections through the construction of a viaduct) continued to make these allowances and absorptions until the latter part of 1909, when the trunk lines [1] gave notice of their intention to cancel the same, not only to Manufacturers Railway but to 12 other industrial lines, and accordingly the allowances were canceled March 1, 1910 (No. 142, R. 48).

[1] St. Louis, Iron Mountain & Southern Railway Company; Missouri Pacific Railway Company; Wabash Railroad Company; Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railroad Company; St. Louis Southwestern Railway Company; Louisville & Nashville Railroad Company; Baltimore & Ohio Southwestern Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company; Chicago, Rock Island & Pacific Railway Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Illinois Central Railroad Company; Mobile & Ohio Railroad Company; Southern Railway Company; Vandalia Railroad Company; Toledo, St. Louis & Western Railroad Company; Chicago, Peoria & St. Louis Railway Company.

Anheuser-Busch and Manufacturers Railway then jointly filed a complaint (No. 142, R. 364) before the Commission, claiming allowances under section 15 as the owners of property for the transportation of which they had rendered service and furnished instrumentalities of shipment. They also prayed for an order commanding the trunk lines to establish through routes and joint rates with Manufacturers Railway, and to cease and desist from longer refusing to do so, that reasonable divisions with Manufacturers Railway be determined, and that reparation be ordered (No. 142, R. 375, 376).

In their answers, not a single carrier admitted Manufacturers Railway was a common carrier; several denied it; others disclaimed knowledge (No. 142, R. 28). St. Louis Southwestern Railway, which has joined in a petition against the order, was the most vigorous of all in its denunciation of any allowance to Anheuser-Busch and Manufacturers Railway (No. 142, R. 378, 379).

After the hearing (in which the carriers offered no evidence) and report (No. 142, R. 25), but without any order (No. 142, R. 36), the Commission found that Manufacturers Railway "is in fact a common carrier at common law" and "that payment to it of a reasonable and just portion of the St. Louis rates for the terminal services rendered by it is not unlawful" (No. 142, R. 34). It was further found that the record does not present "a sufficient basis for satisfactory determination of the question as to the reasonable and just division or allowance to the

complainant carrier," and the further question "as to whether a part of the services performed by it is or is not plant-facility service" (No. 142, R. 36). Commissioner Lane concurred in part and dissented in part (No. 142, R. 36). Commissioner Harlan dissented (No. 142, R. 39).

After a supplementary hearing, in which the trunk lines offered new evidence, and supplementary report filed June 21, 1913 (No. 142, R. 42), and again without any order, the Commission condemned the then allowance of $4.50 "as effecting unlawful results" (No. 142, R. 59). The Commission found that $2 per car was a reasonable charge for shippers on the Manufacturers Railway to pay for the service which it rendered (No. 142, R. 59).

On the promulgation of the supplementary report Manufacturers Railway "canceled all its concurrences in the trunk lines' tariffs, thereby rendering impossible compliance by the trunk lines with the prayer of its own petition" (No. 142, R. 73). Moore subsequently testified: "I have advised each line that we are not prepared to accept a division of $2.50 until we are required to do so" (No. 142, R. 262). As a result the total rate consisted of the trunk line rate plus the switching charge of Manufacturers Railway.

After a reargument on November 13, 1913, and before the final report was filed on July 10, 1914, St. Louis Southwestern (which had taken the position that Manufacturers Railway was not a common carrier at all and that any allowance to it was unlawful),

on December 7, 1913, filed a tariff, by which it proposed to allow $4.50 to Manufacturers Railway for the switching of cars (No. 142, R. 4) and absorb it in the St. Louis rate. That tariff was sus pended (No. 142, R. 5) and later canceled (No. 142, R. 7).

After report on the reargument (Commissioner Harlan dissenting) the Commission entered the order (No. 142, R. 68, 78), wherein it authorized the charge of $2.50 per car (No. 142, R. 71), which might be paid by the trunk line carriers out of the through rate, saying (No. 142, R. 71): "We did not by anything there said (in the previous report) condemn the voluntary payment by the trunk lines to the complainant railway of reasonable allowances or divisions; nor did we disapprove of the trunk lines participating with the complainant railway in the establishment and maintenance of joint rates not higher than their rates to and from St. Louis, provided the division thereof received by the complainant railway in final settlement with them was not excessive. Our remarks in that paragraph, as elsewhere in the report, were directed only to any excessive allowances or divisions which the complainant railway might receive."

St. Louis Southwestern (with Manufacturers Railway) then filed in the district court this petition, attacked the order of cancellation, asserted its right to make the allowance, and alleged that the order of cancellation had been entered without a full hearing having been accorded to it (No. 142, R. 8). It further alleged (No. 142, R. 8) "that a division of less

than $4.50 per car is not, and will not be, sufficient to pay the cost of transportation performed by said Manufacturers Railway Company and yield a just and fair return upon the value of the property used by it in said transportation, and therefore exceeds the power of the Commission and deprives the petitioner, the Manufacturers Railway, of its property without due process of law, in violation of the Fifth Amendment."

Manufacturers Railway and Anheuser-Busch respectively filed in the district court a petition and intervening petition, asserting the right to have established through routes and joint rates with the trunk lines, with reasonable divisions thereof (No. 143, R. 14); that there was no authority to allow the trunk lines to charge to shippers on Manufacturers Railway rates in excess of St. Louis rates, and no authority to allow the trunk lines to charge to shippers on Manufacturers Railway rates in excess of St. Louis rates while St. Louis rates were kept in effect as to shippers on line of Terminal Railroad Association, and that discrimination resulted (No. 143, R. 24, 25); that the order was without substantial evidence to support it (No. 143, R. 25), confiscatory, and in violation of the Fifth Amendment (No. 143, R. 25); that the Commission erred in holding that it had no power to order the establishment of joint rates and the maximum to be charged and to prescribe divisions thereof (No. 143, R. 26).

Answers were filed in the district court (No. 142, R. 80; No. 143, R. 42) and an order was entered

appointing a special examiner to take proofs (No. 142, R. 14). The hearing was attended by counsel for Anheuser-Busch, St. Louis Southwestern, and Manufacturers Railway. Counsel for the latter stated that the proofs would be limited to the single issue that $4.50 was not sufficient to pay the cost of transportation and that such an allowance, or any lesser amount, was confiscatory (No. 142, R. 104, 105, 106).

After a long session at which many witnesses testified and much proof was adduced (including the transcript of the evidence and proceedings before the Interstate Commerce Commission), the final hearing before the district court in the two cases resulted in dismissals of the petitions as stated.

In No. 142, the St. Louis Southwestern rests on the proposition that in the cancellation of the tariff authorizing an allowance of $4.50 to Manufacturers Railway it was denied a full hearing. In No. 143, the assignments of error are so grouped as to raise three propositions: 1. There was no presumption of reasonableness in the *increase in the rates* wrought by the tariffs of the carriers of March 1, 1910, cancelling the allowances (Br. 46). 2. Unlawful discrimination resulted from the absorption of all switching charges on traffic to and from St. Louis except on traffic to and from shippers located on tracks of Manufacturers Railway (Br. 66). 3. The commission should have allowed reparation to Manufacturers Railway (Br. 141).

ARGUMENT.

I.

THE RATE FIXED BY THE COMMISSION WAS BASED UPON SUFFICIENT EVIDENCE AND WAS NOT CONFISCATORY.

(1) There was substantial evidence that $2.50 per car was a just and reasonable compensation for the service rendered by the Manufacturers Railway in handling and switching cars.

Portions of the evidence before the Commission may be referred to as—

(*a*) The vast amount of oral testimony contained in the voluminous record on the subject of the switching of carload freight at St. Louis and elsewhere and the charges therefor, and—

(*b*) The exhibits offered on the same or similar subjects.

Moore's testimony (No. 142, R. 516) particularly—

> Under our tariff in force February 28 our charge for the movement from the rice warehouse to the brewhouse would be one dollar. On the movement from St. Louis Cooperage Company to the Stecher Cooperage Company the charge would be two dollars; and for the movement from the brewhouse to the Iron Mountain connection it would be $5.50 per car. The least expensive operation for the movement itself is the latter.

George W. Lamb, Statistician, L. & N. R. R. Co., Louisville, oral testimony and—

> Exhibit No. 1, showing figures on demurrage which would accrue to Manufacturers Railway in the event of delay in handling cars (No. 142, R. 750, 754).

Exhibit No. 1*a*, showing mileage accruing on refrigerator cars of St. Louis Refrigerator Car Company (No. 142, R. 754, 755).

Exhibit No. 2, showing comparison of operating expenses of St. Louis Transfer Railway, St. Louis Connection Railway, and Manufacturers Railway in the handling of loaded and empty cars (No. 142, R. 755).

Exhibit No. 3, showing increase cost, including taxes and interest on investment per car on additional haul for 2 miles (No. 142, R. 759).

John F. Roach, Manager, Central Demurrage & Storage Bureau, St. Louis, oral testimony and—

Exhibit No. 1, statistics showing earnings accruing to Manufacturers Railway under per diem agreement in the event of delay in the handling of cars on the part of connecting lines (No. 142, R. 771).

C. B. Compton, freight traffic manager, L. & N. R. R. Co., Louisville, oral testimony and—

Exhibit No. 1, showing analysis of terminal facilities in territory contiguous to Manufacturers Railway, St. Louis, Mo. (No. 147, R. 792, 793).

Exhibit No. 11, figures showing movement of freight in private car line cars and the return movement loaded with empty packages for account of Anheuser-Busch (No. 142, R. 814, 815).

Exhibit No. 12, figures showing movement of freight from Anheuser-Busch in private car

lines from St. Louis to southern points and including mileage paid return movement to Anheuser-Busch (No. 142, R. 815).

T. A. Hamilton, with vice president in charge of operation of St. Louis & San Francisco Railroad, and assigned to statistical work, oral testimony and—

Exhibit No. 60, figures showing operating expenses, taxes, rentals, and interest and net income from operating with average per car handled for revenue, year ended June 30, 1911 (No. 142, R. 687, 691).

George F. Moore, president Manufacturers Railway, St. Louis, oral testimony, and—

Exhibit No. 73, showing analysis locomotive report account, year ended June 30, 1910, and analysis of superintendents' maintenance of equipment, expense ending June 30, 1911 (No. 142, R. 730).

Exhibit No. 74, showing analysis of general expense account, Manufacturers Railway, year ending June 30, 1909 (No. 142, R. 731).

Exhibit No. 75, showing analysis of reserve for accrued depreciation account of tracks and structures Manufacturers Railway (No. 142, R. 732).

(*c*) The full proof of the lack of any real separation or division of the property of Anheuser-Busch and Manufacturers Railway and the lack of any real separation or division of the various services.

(*2*) *The Commission properly considered the relations existing between Anheuser-Busch Brewing Association and Manufacturers Railway, and the indivisible nature of the services performed by the Railway*

for the Association and the Trunk Lines at one and the same time.

At all times from the beginning, the Commission has steadily adhered to the principle that the peculiar character of the service should be considered as an element in authorizing any allowance.

Commissioner Clements, in the first report, said (No. 142, R. 36):

> The Commission sees no reason to doubt the correctness of the principles announced by it in the determination of the following cases: In the Matter of Divisions of Joint Rates and other Allowances to Terminal Railroads, 10 I. C. C. Rep., 385; *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. Rep., 237; *Solvay Process Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. Rep., 246; *Crane R. R. Co.* v. *P. & R. Ry. Co.*, 15 I. C. C. Rep., 248; *Crane Iron Works* v. *C. R. R. Co. of N. J.*, 17 I. C. C. Rep., 514, in respect to the amount of allowances to carriers the lines of which are owned by those whose industries are served by them in connection with other carriers, and the character of the services for which lawful allowances may be made. The responsibilities and liabilities of each carrier in the line composing a through route under the law can not be evaded by it.

Commissioner Clements, in the third report, concluded (No. 142, R. 73):

> Cases of this nature involving payments by trunk lines to short terminal lines of railroads which were once only appurtenances

> to private industrial plants served by them have been the cause of much investigation by and concern to us in our efforts to effectively administer the law under which we act, and the sooner any doubtful constructions of that law with respect to such matters are clearly settled by judicial decision the better.

In *Tap Line cases* (234 U. S. 1, 29) Mr. Justice Day said:

> It is not only within its power but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take, and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does. (See also *O'Keefe, Receiver*, v. *U. S.* 240, U. S. 294.)

(*3*) *The nature of the service and the manner in which it is performed.*

In finding that Manufacturers Railway is a common carrier and entitled to allowances as such (No. 142, R. 34) the commission had the right fully to consider what it termed "the peculiar features of this case" (No. 142, R. 36).

The proofs show that the service which Manufacturers Railway performs in the yards, plant, and buildings of the brewery, i. e., spotting of cars,

switching of loaded and empty cars from one building to another, or from one yard to another, or from a yard to a building, or from a building to a yard, weighing of cars, interchanging of cars, and every other conceivable service which a plant covering 40 city blocks and the buildings thereof would require in the manufacture of its product and in the loading, unloading, and handling of 50,000 carloads of freight per year, inbound and outbound, is so blended and confused with the service (No. 142, R. 75) which it claims to render for the trunk lines as to make the several services inseparable and indivisible.

A car may be moved from the bottling department to and in the ice house; thence to and in the keg department; thence to and on a sidetrack and held; thence to and on the scales and weighed; thence to and in the assembling yards and something additional put in; thence over the viaduct to the river yard for delivery to the connection. It may thus make a dozen such movements in coming from Thirteenth Street to the river yard, all on the direction and for the convenience of Anheuser-Busch.[1]

It is worth noting that the complainants themselves were undecided as to the character of the service they rendered and under what section of the statute compensation therefor should be claimed.

[1] The confused nature of the service was explained at length by the president of Manufacturers Railway. Portions of the testimony given by him are set forth in the appendix.

The complaint before the Commission alleged (No. 142, R. 372):

> Manufacturers Railway Company * * * as to the merchandise transported for any and all industries, persons, companies, firms or corporations located upon or along the lines of said * * * company over its said lines and over the lines of any of said defendants, renders a service connected with such transportation and furnishes instrumentalities used therein, for which service and instrumentalities so rendered or furnished the said * * * company is entitled to a just and reasonable charge and allowance to be paid by the said defendant or defendants for which said service is rendered or said instrumentality furnished as provided in Section 15 of said Act to Regulate Commerce.

The complaint further alleged (No. 142, R. 372):

> Manufacturers Railway Company * * * is a common carrier as such term is defined and used in the act to regulate commerce * * * and that it is actually engaged in the business of a common carrier of goods and merchandise from points in the city of St. Louis, State of Missouri, to points in other States * * * and is entitled to said through routes and joint or through rates as allowed by said tariffs in effect prior to the 1st day of March, 1910.

In seven years of litigation Anheuser-Busch and Manufacturers Railway, though claiming to be shipper and carrier, and separate entities, have stood

united on the same side, represented by the same counsel. At the outset, the learned counsel conceived that by holding the two concerns together on the same side, before the commission and the courts, they could, as they did, claim allowances under section 15[1], on behalf of Anheuser-Busch "as the owner of property transported" which "directly or indirectly renders any service connected with such transportation, or furnishes any instrumentalities used therein" * * *; or, if they lost on that proposition, they could then, as they did, claim divisions out of joint rates and through routes with the trunk lines.

If their case is of such a nature that the learned counsel, with all of their information, were not able to discern whether their client, who was demanding these allowances, was a shipper or a carrier, they are not in a position to criticize the carriers, the commission, and the district court for alleged errors in the handling of a case about which they themselves were undecided.

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[1] If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section (34 Stat. 584, 590).

(4) *The evidence introduced before the District Court in the effort to prove confiscation was totally inadequate.*

George F. Moore, in speaking of the cost of making the various movements within the plant, testified (No. 142, R. 279, 281):

> I have tried in every way I could think of to determine whether the average cost of moving a car to have it weighed exceeds the average cost of moving a car for interchange with connections, or moving a car between one industry in the plant and another. The best way, to my notion, was to ride upon the engine doing the switching, for a certain length of time, and notice the business that that switch crew was handling during the time that I myself was with the engine. That I have done, and I would find the same crew and engine handling all different classes of the named groups in one cut at times, and then at times I would find an engine moving with only one class of business as grouped, and I could not determine any difference in the cost of handling the placement of one class of business as compared with the placement of another class of business. This was brought out very clearly. * * *.
>
> So it has been impossible for me to segregate the cost of each of these particular services. I have stated that there is a difference of cost sometimes between handling two cars in a like business.

In *Missouri Rate Cases*, 230 U. S. 499, 500, this method of valuation was condemned, and the court said:

> We are referred to the testimony of two witnesses for the complainants, men of considerable experience in railroad affairs, but this consisted of broad estimates.
>
> * * * * *
>
> It is clear that testimony of this general character can not be deemed sufficient to support a finding of confiscation or to justify the annulment of the legislative acts of the State.

The Anheuser-Busch trackage lease to Manufacturers Railway (supra, p. 5) containing the preference clause was attacked by the carriers at the first hearing as invalid and therefore not to be considered in fixing rates (No. 142, R. 46). However, Anheuser-Busch quickly amended the lease, struck out the preference clause, and subsequently made the following explanation, through George F. Moore, president, Manufacturers Railway, who testified (No. 142, R. 348): "I took it up with the brewery, after the hearing, and had this new lease executed. * * * All the authority I need to make a change in the lease is the authority of the Anheuser-Busch Brewing Association, and I believe it is true that the same men control the Manufacturers Railway who control the brewing association. The result is that any kind of a lease could be made that seemed desirable to those men. * * * They could have made a lease for almost any amount. * * * They do control the brewing association and the railway, and they could make the lease in

any amount that would be mutually agreeable to their representatives on each of the boards."

John W. Kendrick was an important witness before the court for Anheuser-Busch and Manufacturers Railway. He valued this lease *"from Busch to Busch"* at $~~755,102~~ (No. 142, R. ~~181~~). 225

Throughout his testimony he emphasized the distinction between the tracks used exclusively by Anheuser-Busch *as tracks for private use* and tracks which were occasionally also used by independent shippers *as tracks for public use.*

On cross-examination he testified that the difference had nothing whatever to do with the physical valuation of the railroad property (No. 142, R. 197 198).

While this expert testified in the case of St. Louis Southwestern and Manufacturers Railway (No. 142) he was retained by the counsel for Anheuser-Busch (No. 142, R. 193).

George F. Moore testified that Manufacturers Railway had refused to accept $2.50, and had accordingly canceled all concurrences in through routes and joint rates. There is an ancient maxim that "he who seeks equity must do equity." Manufacturers Railway is not in a position to make a claim of confiscation until it has applied the revenues which the commission has authorized. If it is able contemptuously to reject $125,000 [1] per year for the several years during the pendency of this litigation and still pay its operating expenses and just debts, it would not seem

[1] 50,000 cars at $2.50 each (No. 142, R. 75).

to be in such immediate danger of destruction as to justify the interposition of a court of equity because the Commission failed to allow $4.50 per car.

(5) *The finding of the commission is, moreover, conclusive.*

The reasonableness of the allowance for the service rendered by the Manufacturers Railway was within the exclusive authority of the commission to judge. *Illinois Central Railroad Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 465; *Interstate Commerce Commission* v. *Illinois Central Railroad Co.* 215 U. S. 452; *Baltimore & Ohio Railroad Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481; *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Railway Co.*, 218 U. S. 88; *Interstate Commerce Commission* v. *Union Pacific Railroad Co.*, 222 U. S. 541; *Procter & Gamble Co.* v. *United States*, 225 U. S. 282; *Interstate Commerce Commission* v. *Louisville & Nashville Railroad Co.*, 227 U. S. 88; *Atchison, Topeka & Santa Fe Railway Co.* v. *United States*, 231 U. S. 736; *Pre-cooling Case*, 232 U. S. 199; *Los Angeles Switching Case*, 234 U. S. 294; *Pennsylvania Railroad Co.* v. United *States*, 236 U. S. 351; *Louisville & Nashville Railroad Co.* v. *United States*, 238 U. S. 1; *O'Keefe, Receiver*, v. *United States*, 240 U. S. 294; *United States* v. *Merchants & Manufacturers Traffic Association*, 242 U. S. 178.

II.

THE CHARGE THAT THE TRUNK LINES ARE PERMITTED TO DISCRIMINATE AGAINST MANUFACTURERS RAILWAY AND SHIPPERS ON ITS LINE AND IN FAVOR OF TERMINAL RAILROAD ASSOCIATION AND SHIPPERS ON ITS LINE IS NOT SUSTAINED.

(*1*) *The Commission has not condemned through routes and joint rates or prohibited a reasonable allowance to Manufacturers Railway by the trunk lines.*

The Manufacturers Railway, not the Commission, canceled out through routes and joint rates with the trunk lines and declined to accept the allowance. After choosing for itself that position, it charged discrimination in favor of Terminal Railroad Association. Counsel also refer to what they call "one of the most striking illustrations of the gross discrimination against the complainant railway and against its shippers" (Br. 96, 97) in that the Vandalia pays an allowance to Iron Mountain for making delivery to the north side of the plant of N. K. Fairbank Company, and refuses to pay anything to Manufacturers Railway for making a similar delivery to the south side of the plant (Br. 97).

Had it continued the through routes and joint rates and accepted the allowance the Manufacturers Railway would have no grievance because of the relations between Terminal Railroad Association and the trunk line carriers. By its own conduct Manufacturers Railway is estopped to charge discrimination against itself of its own creation.

(*2*) *Dissimilar circumstances and conditions exist with respect to Terminal Railroad Association and Manu-*

facturers Railway, hence there can be no discrimination.

At the original hearing Manufacturers Railway charged Terminal Railroad Association with being an illegal conspiracy and combination in restraint of trade and commerce (No. 142, R. 369), but the Commission refused to be drawn into such a controversy (No. 142, R. 57).

Commissioner Clements, in the second report, said (No. 142, R. 47, 57):

> The only individual trunk line which owns its separate terminals on each side of the river and the necessary connecting car ferry between them is the Iron Mountain, and these facilities of that carrier are in addition to its one--fourteenth interest in the Terminal Association, of which it is one of the proprietary lines. It will thus be seen that on traffic to and from the east the trunk lines entering St. Louis are dependent upon the facilities afforded either by the terminal association or by its proprietary or tenant lines, and that the railway is dependent upon one or the other of those facilities as an inlet and outlet to all of its traffic.

In *United States* v. *Terminal Railroad Association*, 224 U. S. 383, this court said:

> It can not be controverted that, in ordinary circumstances, a number of independent companies might combine for the purpose of controlling or acquiring terminals for their common but exclusive use. In such cases other companies might be admitted upon terms or excluded altogether. If such terms were too

> onerous, there would ordinarily remain the right and power to construct their own terminals (p. 405).
>
> * * * When thus jointly owned and controlled, whether through the medium of a mere holding or operating company, such as the Terminal Company is, or by other means, the facilities would belong to each relatively to its own business and delivery would be made by each company over its own tracks to connecting lines or places of destination in the city. The charge for the haul thus lengthened would then be properly absorbed by the through rate, leaving nothing to be added to that to be charged the shipper or consignee but switching and storage charges proper (p. 406).

Commissioner Clements, in the second report, and following the line of testimony and claim of Manufacturers Railway, said (No. 142, R. 52):

> * * * That the railway is the only terminal line in St. Louis doing a terminal business exclusively and that it in that respect differs from the lines embraced within the terminal association is conceded by its president in his testimony in support of complainants' contentions as to the reasonableness of the amount of the allowances demanded by them: "* * * Primarily, service rendered by the Manufacturers Railway is a switching and terminal carload service. The Manufacturers Railway Company is the only terminal company doing an exclusive terminal and switching service in St. Louis."

Commissioner Clements, in the third report, refers to the opinion of this court in *United States* v. *Terminal Railroad Association*, 224 U. S. 383, and adds (No. 142, R. 70):

> * * * The complaint is not directed to the reasonableness of the separate rates either of the complainant railway or of the trunk lines. At the time these allowances to the complainant railway were canceled the trunk lines were also absorbing the charge, usually of $3 a car, made by the Terminal Railroad Association of St. Louis, on traffic passing over its rails. The capital stock of the Terminal Railroad Association is owned by the 14 trunk lines entering St. Louis. The absorption of this latter charge the trunk lines did not also discontinue when they canceled these allowances to the complainant railway and the other terminal lines to and from industries, referred to, by reason of which situation the complainant railway and its shippers alleged in their petition that they were thereby subjected to undue prejudice and disadvantage. We held that the trunk lines by their action in canceling the allowances to the complainant railway while continuing to absorb the charge of the Terminal Railroad Association, the stock of which, as stated, they own, did not thereby subject the complainant railway or its shippers to undue prejudice or disadvantage * * *.

(*3*) *The decisions cited by appellants do not sustain the contention that discrimination in the handling of traffic exists if a basis is established for Manufacturers*

Railway different from that prevailing on Terminal Railroad Association.

In support of the charge of discrimination counsel cite and quote from *Pennsylvania Co.* v. *United States*, 236 U. S. 351 (Br. 101), and *Louisville & Nashville R. R. Co.* v. *United States*, 238 U. S. 1. As a triumphant finale, they cite *Louisville & Nashville R. R.* v. *United States*, 227 Fed. Rep. 258, commonly known as "Nashville switching case," which, they say, "bears a close analogy to the case at bar on this point; therefore we venture to quote at some length from the opinion." After quoting a large portion of the entire opinion, much of which they have emphasized with italics, they again assert that the decision on the issues there raised is conclusive on the issues in the case at bar (Br. 107).

Their brief in this case was filed before the opinion of this court in *Louisville & Nashville R. R. Co.* v. *United States* (242 U. S. 60) was announced, reversing the judgment in 227 Fed. Rep. 258. As the learned counsel for the appellants have relied so strenuously and conclusively on the opinion of the district court, their whole case here has already been exploded beyond recall.

Mr. Justice Holmes, in delivering the opinion, said:

> The fact principally relied upon to uphold the order of the Commission is that instead of each road doing its own switching over the terminals used in common they switch jointly, and it is said that therefore each is doing for the other a service that it can not refuse to a

third. We can not believe that the rights to their own terminals reserved by the law are to be defeated by such a distinction. We take it that a several use by the roads for this purpose would open no door to a third road. If the title were strictly joint throughout in the two roads, we can see no ground for prejudice in the adoption of the more economical method of a single agency for both, each paying substantially as it would if it did its own work alone. But, as we have indicated, a large part of the terminals is joint property in substance and the whole is held and used as one concern.

III.

ST. LOUIS SOUTHWESTERN IS NOT AGGRIEVED BY THE ORDER OF THE COMMISSION.

(*1*) *The claim of St. Louis Southwestern that it was not accorded a full hearing is only an attempt to favor Anheuser-Busch, notwithstanding the action of the Commission.*

St. Louis Southwestern was one of the carriers who canceled the tariffs authorizing the allowances (No. 142, R. 48). For that action it was made a defendant to the original complaint (No. 142, R. 364), and in its answer it vigorously defended itself (No. 142, R. 378–379). The Commission had the right to rely on its good faith.

In its answer to the complaint it alleged that "it canceled the said tariff for the reason that it was advised that the allowances that it heretofore made to the Manufacturers Railway were illegal, and not

permitted under the law, for the reason that it was advised, believed, and still believes, that the Manufacturers Railway is merely an industrial or tap line, and under the law not entitled to any part of the through rate from or with this defendant * * * that it canceled the said tariff and arrangement because it believed that the same were unlawful as aforesaid, * * * (No. 142, R. 378, 379).

On November 13, 1913, the Commission heard the final arguments in the main case, No. 3151, which it then took under advisement (No. 142, R. 68).

Knowing that the final report of the Commission would shortly be filed, and reversing the position it had maintained for a number of years before the Commission, St. Louis Southwestern, on December 7, 1913, "switched over" to Manufacturers Railway, and published a tariff by which it agreed to absorb a previously published rate of $4.50 of Manufacturers Railway, and which the Commission, presumably on representations of St. Louis Southwestern and the other carriers, had condemned. In "Investigation and Suspension Docket No. 355," St. Louis Southwestern undertook to make a new case by invoking another provision of the statute,[1] and the Commission promptly

[1] Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons

rebuked it. It now complains that the action of the Commission in canceling that tariff was taken without any hearing whatever having been accorded to it. In effect, counsel argue that because it filed that tariff all of the proceedings conducted by the Commission in the main case stood for naught and as if nothing had happened. As said in *Railway Co.* v. *McCarthy*, 96 U. S. 267 "this point was an afterthought, suggested by the pressure and exigencies of the case."

In Point IV of their brief (Br. 23) counsel say that the "issues in case No. 3151 not same as in I. & S. No. 355 and hearing in former can not be considered hearing in latter case."

I. & S. No. 355 related to an allowance from St. Louis Southwestern to Manufacturers Railway for the switching of the traffic of Anheuser-Busch. The allowance and absorption which St. Louis Southwestern sought to restore was the identical allowance which it had previously canceled out. How, then, can they say the issues are not the same? The reasonableness of the allowance and the right of St. Louis Southwestern to absorb the same in the through rate was the subject matter of the hearing before the Com-

for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than 120 days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective. * * * (36 Stat. 539, 552.)

mission in No. 3151. In their petition filed in the district court, appellants make no claim that I. & S. No. 355 was a proceeding separate and distinct from the main case (No. 142, R. 7). On the contrary, they allege that there was no evidence in the record in No. 3151 to support the order of cancellation in I. & S. No. 355. J. D. Watson, assistant general freight agent, St. Louis Southwestern, who testified before the Commission in No. 3151 (No. 142, R. 656–670, 712–721) also testified on the same subjects for that company before Examiner Babbitt, appointed by the district court (No. 142, R. 299–318).

If I. & S. No. 355 was a proceeding separate and apart from No. 3151, why did Manufacturers Railway join St. Louis Southwestern in the petition to enjoin the order? In No. 142, which is the proceeding to enjoin the order in I. & S. No. 355, the counsel for the joint petitioners offered in evidence a copy of the original complaint in No. 3151, and a copy of the answer of St. Louis Southwestern. The counsel for both petitioners also offered in evidence in support of the allegations of the petition the entire record of the evidence and proceedings before the commission in I. C. C. Docket No. 3151, including four volumes of testimony and a vast number of exhibits (No. 142, R. 381).

(*2*) *The claim on the part of St. Louis Southwestern of confiscation of the property of Manufacturers Railway is as baseless as its claim that it was not accorded a full hearing.*

After the Commission had found that Manufacturers Railway was entitled to an allowance as a common carrier, St. Louis Southwestern offered $4.50 per car, and alleged that any allowance less than that amount *was confiscatory of the property of Manufacturers Railway* (No. 142, R. 8).

J. D. Watson, freight traffic manager, St. Louis Southwestern, testified before the court, in his cross-examination, in substance, that the charge of $4.50 per car was too small as compared with what they paid in St. Louis for similar service. Notwithstanding St. Louis Southwestern was clearly in need of the money, it was yet willing, at the expense of its own treasury, to protect Manufacturers Railway (No. 142, R. 302, 303, 304). St. Louis Southwestern made no claim of confiscation of its own property (N. 142, R. 311, 312).

St. Louis Southwestern is on the wrong side of the case. The position taken by it is inexplicable, unless, as Commissioner Lane suggested when referring to another subject, it was "buying business" (No. 142, R. 37). The inconsistent positions of St. Louis Southwestern are alone sufficient to cast a cloud over the whole case. In *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S. 88, 109, this court said:

> It is somewhat strange that that which was done in the interest of the carriers should be brought forward by them to attack the action of the Commission. * * * We have said several times that we will not listen to a party

who complains of a grievance which is not his. *Clark* v. *Kansas*, 176 U. S. 114; *Smiley* v. *Kansas*, 196 U. S. 447.

IV.

REPARATION.

Counsel argue that the commission erred in not allowing the prayer of Manufacturers Railway for reparation (Br. 141).

Commissioner Clements, in the Second report, disposed of that question thus (No. 142, R. 55):

> * * * That the separation in fact of the railway from the brewery seems even yet not to have been clearly effected in the minds of the complainant would seem to be further shown by the fact that the railway, as one of the complainants, is claiming reparation on the shipments that moved in the interim during which the allowances were not paid and is carrying the claim in its accounts. Upon what theory it as a common carrier can at the same time be a shipper or as a common carrier can claim reparation from another common carrier we are not advised. Neither are we definitely advised whether the brewing association as a shipper and the independent shippers on its line intend to make similar claims. It is manifest that any claim for reparation must come from the shipper who pays the rate and that the order must run against each carrier in the route, one of which is the railway. We can conceive of no circumstances under which this commission could award reparation against the trunk lines to the Manufacturers Railway as a common carrier.

In any case, reparation is a matter to be determined after the disposition of the main case, and it is not a matter with which the Government, or the public interest, is concerned. In *Baer Brothers Mercantile Co.* v. *Denver & Rio Grande Ry. Co.*, 233 U. S. 479, 486, this court said:

> That the two subjects of Reparation and Rates may be dealt with in one order is undoubtedly true. *Texas & Pac. Ry.* v. *Abilene*, 204 U. S. 426, 446; *Robinson* v. *Balt. & Ohio R. R.*, 222 U. S. 506, 509. But awarding reparation for the past and fixing rates for the future involve the determination of matters essentially different. One is in its nature private and the other public. One is made by the Commission in its *quasi* judicial capacity to measure past injuries sustained by a private shipper; the other, in its *quasi* legislative capacity, to prevent future injury to the public.

CONCLUSION.

The decree in each case should be affirmed.

JOHN W. DAVIS,
Solicitor General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

MARCH, 1917.

APPENDIX.

George F. Moore, president Manufacturers Railway, who was the principal witness at all times for the complainants, fully outlined the handling of the cars.

When asked to trace a car from the time the empty goes in the plant and returns with the load, he testified (No. 142, R. 335, 336):

> I will, as you ask, trace a carload of beer, coming in empty and going out loaded, the various stops it makes, and what it takes on from the time it comes in until it goes out, handling it beginning where I first see the car, and taking it through and telling what is done with it until it is delivered to a connecting line.
>
> We will presume that this car comes in empty and is received by the Manufacturers Railway north of Dorcas Street and east of the Iron Mountain yards, on what we term our "interchange tracks" with the St. Louis Transfer Railway. The car, no doubt, would be first set over in the river yards and held until we had need of it to load it. It would then be picked out of the river yard, brought over the viaduct, and set in the Second Street yard as an empty. When it was placed in the Second Street yard it would be iced from some other car containing ice that had moved in intraplant movement from the ice court to Second Street. After it was iced, teams would bring down the keg beer from the stock house up near Ninth and Wyoming Streets; enter the Second Street yard or the driveway which

is located just west of Second Street on the north line of Arsenal, and load the car with keg beer. It would then be sealed, the billing tickets would be furnished to the superintendent, and the car would probably be set in on this track to await more cars, or the time when it would be proper to make a delivery either to the Iron Mountain or the Transfer Railway. That would dispose of the car so far as the Manufacturers Railway is concerned.

When asked to describe the handling by Manufacturers Railway of "a cut of cars," he testified (No. 142, R. 280, 281):

To illustrate the similar movement with a cut of cars, for instance, involving each of these services: The switch crew's work would result in their daily performance laid out so as to have the same locomotive serve during the day a particular subdivision of the tracks of the Manufacturers Railway. Take, for instance, a locomotive serving the Dorcas Street tracks and the yards diverging from the Dorcas Street tracks. That locomotive may make eight or ten trips up and down Dorcas Street during the day. Following out one of the trips: They may have taken cars from the First Street Yard which contained freight coming from New York or from a point in Missouri; some empties that are going to New York or to a point in Missouri; some car which was probably loaded at the bottle shop and goes up to Thirteenth Street to be unloaded, that last being an intra-plant movement; they would take these cars in hand and place them on their trip up to Thirteenth Street. In returning they would have with them loaded cars moving in interstate business and intrastate business. They would have cars that were made empty and not reloaded, that would

be delivered back to the owners, or to the immediate connection, I should say, instead of owners, and they would come down Dorcas Street with such a cut of cars behind them. One of those cars that they picked up in the Thirteenth Street yard some one might want weighed for some reason or other, and they would take that car down to the scales which are located between Arsenal and Utah Streets on the property that we received from the Government, and have it weighed. It might be that one of those cars from Thirteenth Street was partly loaded with beer in cases and it would be brought down and sent into the Second Street yard as an intra-plant movement to be finished loading with keg beer. Each movement of a switch engine, I believe, will comprise more than one class of this group business, and the business is handled just about as I have described it to you. That is from my personal observations.

Describing what he designated as "an internal switch movement" for Anheuser-Busch, he testified (No. 142, R. 515, 516):

The shortest route by which a car would be moved from the rice warehouse to the brewhouse at Ninth Street of the Anheuser-Busch Brewing Association would be on the Pestalozzi Street line, between three and four city blocks. It would go through what we call the Horn yard, down under the viaduct. That would be an additional movement. The movement complete from the rice warehouse to the brewhouse would be about seven blocks, I think. It would move the whole length of the Pestalozzi Street track. That movement would be necessary to transport a car of rice from the rice warehouse to the brewhouse, and that is one typical case of an internal switch movement for the Brewing Association.

Describing what he designated as "an internal movement" and a "weighing movement," he testified (No. 142, R. 518):

> Assuming that we placed upon a track adjacent to a loading platform a string of 20 cars that were available for loading and were loaded, and then the string was pushed forward by an engine so that the next cars might be loaded—I would not regard that placing of the cars, five at a time, as an internal movement, nor charge the Anheuser-Busch Brewing Association nor anybody else for it. If we placed an empty car at some loading platform at the request of the brewing association, and after the car had been placed there the brewery changes its plans and wants to load the car at some other point, and they then request us to move the car from the first point at which it was placed to the point at which it is desired to load—I regard that as an interwork movement and charge $1 for it. In the ordinary course of business there will be very little interwork switching except for the Anheuser-Busch Brewing Association. If it should be considered desirable to ice a car for outbound movement before it is loaded with beer, and that car was taken and placed at the ice house, and ice put into the car, and then moved over to the loading platform and loaded with beer—I would regard that as an interwork switching.
>
> * * * * *
>
> As to the different kinds of service performed by the railway in handling cars: It performs a switching and terminal service. This service consists in handling carload freight moving in interstate and intrastate business, movements of a supplementary nature affecting either the interstate or the intrastate movements. The weighing of cars I class as a supplementary movement, and a

number of the so-called intraplant movements I would say were simply intraplant movements (No. 142, R. 268.)

* * * * *

There is another movement where we move cars for the purpose of weighing. There is a third movement which we perform, namely, the moving of a car from one part of the Anheuser-Busch Brewing Association plant to another part of that plant; we call that the intraplant movement; and those three movements (omitting from consideration now the "trap car" movements referred to) are all the movements performed by the railway company in the handling of cars (No. 142, R. 269).

* * * * *

Describing what he designated as "an outbound movement" of "a car or set of cars" he testified (No. 142, R. 338, 339):

Q. I wanted to know if you considered the entire movement of the car, going up to the yard and back, in your computations?

A. In the number of movements reported, I considered only the loaded cars. I did not consider the inbound movement, empty. You couldn't very well do that, because in a majority of the cases in a busy time cars coming in here under load, and up here (indicating on map) under load, are never moved as an empty, but go out under load; so, for the purpose of trying to be absolutely fair, I have based all of my calculations on loaded movements.

Q. If a drag of cars were loaded in the Thirteenth Street yard by the pulleys that run along there at Thirteenth Street in the bottling department, the car is put in the building, as I understand it, and it is loaded there. If a half dozen cars were loaded in

that manner and the switch engine goes up there and brings that drag of cars down and switches it into the First Street yard and permits it to stand there for an indefinite time, and another switch engine comes in and gets that and brings it down to the river yard, do you consider that whole movement as a part of the outbound movement in your computation?

A. I consider that as one movement in the outbound movement. Every loaded car completed movement, I have considered as one movement, no matter if—as a matter of information I would say that we handle cars an average of five and one-half times before we finally dispose of them, according to the yard reports.

Q. Then you do not consider the movement of the empties going in?

A. Only as a part of the performance of the loaded movement; but whenever a car or set of cars start from Thirteenth Street toward the river, I have considered each movement, whether it came down at different times or straight down, whether it stopped half a dozen times or twice, and was switched around over the yard, as just one movement, if they were loaded cars coming down.

* * * * *

Q. When you have cars from the bottling department and other departments that are going out, you assemble those at the Broadway yard, or some one of the other yards, and then take the drag out over the viaduct to the river yard?

A. Wherever it is most convenient, either in the First Street yard or in the Second Street yard, we collect them; whichever may be the most convenient at the time. Generally speaking, we have hours when we call on the different yards to take up loads and to deliver loads,

but we can not always abide by that schedule, and we make extra runs when necessary. Our assembling yards are the First Street yards, on the east side. We go out with our engine and pick up the cars or drags and bring them down to the First Street yard or the Second Street yard and assemble them, and when we get the cars assembled then we take them out over the viaduct in pair, or four, or ten cars, according to the time when we want to make a delivery, in order to get certain trains out of St. Louis. That regulates very largely the hours at which we deliver freight to connecting lines (No. 142, R. 361, 362).

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MANUFACTURERS RAILWAY COMPANY AND ST. LOUIS SOUTHWESTERN RAILWAY COMPANY *v.* UNITED STATES AND INTERSTATE COMMERCE COMMISSION.

MANUFACTURERS RAILWAY COMPANY AND ANHEUSER-BUSCH BREWING ASSOCIATION ET AL. *v.* UNITED STATES AND INTERSTATE COMMERCE COMMISSION.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

Nos. 24, 25. Argued March 21, 22, 1917.—Decided April 15, 1918.

In a proceeding before the Interstate Commerce Commission to establish through routes and joint rates over the Manufacturers Railway—a company operating terminals at St. Louis and held by the Commission to be a common carrier, though controlled and principally used by the intervening Brewery,—and certain trunk lines at St. Louis, the contention was that the latter, in canceling tariffs wherein they had applied their St. Louis rates to industries on the Railway and had absorbed its switching charges, and in continuing this practice as to another terminal—St. Louis Terminal Railroad Association—whose shares they owned, were guilty of unlawful discrimination, in avoidance of which the absorptions should be reëstablished.

Held: (1) That the finding of the Commission, based upon differences of location, ownership and operation, that there was not undue discrimination was not without evidentiary support and not an abuse of discretion.

(2) That the Commission was justified by the evidence in holding that not more than $2.50 per car should be added to the trunk line rates for the Railway terminal, upon the ground that such limitation was necessary to avoid undue preferences or indirect rebates to the Brewery.

(3) That, as the controversy was not directed to the reasonableness of the trunk line rates, the Commission, in fixing the maximum joint

rate, properly assumed them to be reasonable *per se;* the "increased rate clause" of the Commerce Act, as amended (c. 309, 36 Stat. 552), does not lay upon the carrier the burden of proving a new rate reasonable when that question is not involved in the hearing.

(4) That the decision of this court, respecting the St. Louis Terminal Association (224 U. S. 383, 412; 236 U. S. 194, 207–209), left untouched the powers of the Commission, and complainants were entitled at most to have the Commission consider the nature and objects of the Association as circumstances bearing upon the question of discrimination and questions pertinent thereto.

In fixing joint rates it is within the discretion of the Commission to allow the carriers to arrange the divisions, as contemplated by the first paragraph of § 15 of the Commerce Act (36 Stat. 551), subject to review by the Commission.

Whether a discrimination is undue or unreasonable or unjust is a question of fact confided by the Commerce Act, as amended (§§ 15, 16), to the judgment and discretion of the Commission, and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power.

A court cannot substitute its judgment for that of the Commission upon a purely administrative matter.

Common use of the facilities of the St. Louis Terminal by fourteen trunk lines owning its capital stock, under a single arrangement by which they absorbed the terminal charges, *held* not as a matter of law to entitle another terminal company, having no trunk line and doing terminal switching alone, to precisely the same treatment.

The District Court has no jurisdiction under the Commerce Acts to exercise administrative authority where the Commission has failed or refused to exercise it, or to annul orders of the Commission not amounting to an affirmative exercise of its powers. So *held* where the Commission fixed maximum joint rates for trunk lines and a terminal company, and the gravamen of the latter's suit was the failure to fix the divisions.

A proper foundation for reparation was not laid in the evidence submitted to the Commission in this case.

Pending a proceeding before the Commission involving an inquiry as to how much could properly be allowed to a terminal as divisions or absorptions by trunk line carriers, one of the latter, which was

and remained a party, filed and published a tariff providing for absorptions of the terminal's switching charges up to a certain rate per car which it had previously allowed and retracted and was in the position of attacking in the proceeding as illegal and excessive. The Commission suspended the proposed absorption for 120 days from the effective date, and then for 6 months, to await its decision in the pending inquiry, treating the one as ancillary to the other and as involving no different question on the merits, and, upon deciding the original matter within the 6 months, canceled the tariff without having given it a separate hearing. *Held*, proper, and not inconsistent with the provisions of § 15, second paragraph, of the Commerce Act, as amended June 18, 1910, c. 309, 36 Stat. 552, respecting suspensions of new rates.

Although a rate-fixing order is not conclusive against attack upon the constitutional ground of confiscation, correct practice requires that the objection be made, and all evidence pertinent thereto adduced, before the Commission in the first instance if practicable.

Where the Commission, after full hearing, sets aside a rate as unreasonably high, only a clear case would justify a court, upon evidence newly adduced but not newly discovered, in annulling the Commission's action upon the ground that the same rate was so unreasonably low as to deprive the carrier of its constitutional right of compensation.

The evidence produced and relied on in the District Court by the complaining terminal,—consisting of expert valuation of its leasehold and other property, calculations of revenue and expenses, with allocations to its interstate business,—examined and *held* largely speculative, inconsistent with other evidence, in part based on erroneous theories, and, as a whole, insufficient to establish that a rate of $4.50 per car for interchange movements would be confiscatory.

The voluntary adoption of a rate by a carrier is some evidence against the carrier that it is remunerative.

In estimating the value of a leasehold to the lessee, taxes paid by the lessor should not be deducted from the annual cost as measured by the gross rental.

A finding by the Commission that a railway is a common carrier does not mean that all of its property must be treated as employed in the public service; portions used as a private plant facility should not be considered in determining the adequacy of a rate.

A city leased for railway purposes land, which in considerable part constituted a public wharf. *Held*, that, if the rental was less than

the fair annual value, it must be presumed the excess was granted to the public, and not to the private interest of the carrier, in capitalizing its assets for the purpose of testing the adequacy of a rate.

In testing the adequacy of an interstate rate, it is error to base the computation on the receipts and expenses of the carrier's entire business without considering the adequacy of its charge for services not affected by the rate or their possibly private character.

Affirmed.

These are appeals from final decrees made by the District Court in two cases dismissing petitions filed by the appellants for the purpose of enjoining the enforcement of orders made by the Interstate Commerce Commission. The cases are closely related to each other, were argued at the same time, and will be disposed of in a single opinion.

The facts are intricate, and have been the subject of consideration by the Commission in three reports (21 I. C. C. 304; 28 I. C. C. 93; 32 I. C. C. 100), from which the following resumé is taken:

Situate in South St. Louis, within the limits of the City of St. Louis, Missouri, and on the high ground back from the Mississippi River, are the great industrial plants of the Anheuser-Busch Brewing Association, a corporation, hereinafter called the Brewery, which occupy approximately 126 acres—35 or 40 city blocks—intersected by streets. There are numerous structures, in which are conducted the manufacture and marketing of beer and related products. The tonnage shipped by and to the Brewery is very heavy, amounting to upwards of 40,000 carloads per annum, or approximately one-thirtieth of all the inbound and outbound traffic of the entire city. For a number of years following the establishment of the Brewery its inbound raw materials and outbound products were drawn by horse and wagon from and to the tracks of the St. Louis, Iron Mountain & Southern Railway Company, hereinafter called the Iron Mountain,

on the river front. In the year 1885 this method was abandoned and a plant railway operated by steam was substituted. Two years later the plaintiff Manufacturers Railway Company was incorporated, hereinafter referred to as the Railway, to which control and operation of the plant system was made over. The Railway now has a main line of 2¼ miles, and approximately 23 miles of side tracks. It is engaged exclusively in the switching and delivery of carload freight within the City of St. Louis. The traffic of the Brewery constitutes about 75 per cent. of its total tonnage. At the time of the hearing before the Commission, it owned no cars and only four locomotives; the cars used for the transportation of shipments originating on its line being furnished principally by the St. Louis Refrigerator Car Company, a substantial portion of whose stock is owned by the holders of a majority of the stock of the Brewery. The facilities of the Railway, however, for a considerable period and to a large extent had been available to the public, and it was held by the Commission to be a common carrier, and not a mere industrial or tap line. But a majority of the stock of the Railway was and is owned by the owners of a majority of the stock of the Brewery, so that the same interest controls both properties.

In the year 1888 the Railway leased its tracks to the Iron Mountain for ten years, and in 1898 renewed the lease for ten years. Up to this time the only outlet from the rails of the Railway was to the main line of the Iron Mountain on the bank of the Mississippi River. In 1903 the Railway undertook a further development of its terminal facilities, and the city authorized several extensions along certain streets, and leased to it a part of a public wharf. In 1908 the Railway declined to grant a further lease to the Iron Mountain, and took over the operation of its property, with the object of enlarging and extending its facilities, serving the public in that

portion of the city generally, and connecting with all St. Louis lines by a junction with the St. Louis Transfer Railway.

The principal terminal facilities of the City of St. Louis are dominated by the Terminal Railroad Association, hereinafter referred to as the Terminal, a corporation whose capital stock is owned in equal shares by the 14 trunk lines entering that city. The Terminal, or its proprietary or tenant lines, owns or controls all bridges and ferries giving access to terminals within and lines directly entering St. Louis, so that no interstate shipment can enter or leave the city except over those lines. In St. Louis there are three industrial centers naturally requiring terminal facilities. The northern section of the city along the Mississippi River is one of these, and is served by a considerable mileage of the Terminal and the rails of nine of the trunk lines. In the western section, in what is known as the Mill Creek Valley, there are many industries served by a considerable mileage of the Terminal and the rails of four of the trunk lines. In South St. Louis the companies rendering terminal service are the Manufacturers Railway and the Iron Mountain. The St. Louis Transfer Company, one of the subsidiaries of the Terminal, has a line along the river bank, physically available only to a negligible extent, and the lines of the Iron Mountain generally follow the bank of the river and reach such industries as are adjacent thereto. For a considerable distance along the river in this section of the city there is a steep grade to be overcome in reaching industries situate back from the river, and to confine these industries to the terminal facilities of the Iron Mountain would require a team haul up from the bank of the river. The Railway's terminals reach the high ground referred to, and besides its connection with the Iron Mountain it constructed in 1908 a viaduct leading over the Iron Mountain tracks and then descending to

their level and forming a connection with the tracks of the Transfer Railway, which lie between the Iron Mountain and the river. Through the Transfer Railway it reaches the Terminal, and through the Terminal reaches all the trunk lines that enter St. Louis. The Transfer Railway is a corporation whose stock is owned by the Wiggins Ferry Company, whose stock in turn is owned by some of the trunk lines that own and control the Terminal.

The St. Louis Southwestern Railway Company, a trunk line hereinafter called the Cotton Belt, does not reach St. Louis with its own rails, but enters East St. Louis *via* the rails of the Iron Mountain, over which it has trackage rights. In serving industries within St. Louis it uses the facilities of the Terminal and of the various carriers within the city, including the Railway.

By ordinance of the City of St. Louis the Railway is prohibited from charging more than $2 per car for local switching. Prior to March 1, 1910, and including the entire 20-year period covered by the leases of the Railway to the Iron Mountain, the trunk lines applied their St. Louis rates to traffic originating at or destined to industries served by the Railway, absorbing and paying to the Railway, after the termination of the Iron Mountain lease, a switching charge of from $3 to $5.50 per car, said to average about $4.50. The result of this was that shippers served by the Railway received their transportation at the St. Louis rates without paying anything additional for the terminal service performed by the Railway.

At the same time the trunk lines absorbed the terminal charges of the Terminal (about $3 per car), and similar allowances or absorptions were made by the trunk lines to twelve other industrial lines in and about the city.

About December 31, 1909, the trunk lines by concerted

action notified the Railway that from and after March 1, 1910, they would cancel the tariffs wherein they had applied the St. Louis rates to industries on the Railway and had absorbed the Railway's terminal charges. Similar notice was given to the twelve other industrial lines, and accordingly the allowances were canceled at the date notified, but the practice of absorbing the charges of the Terminal was not discontinued.

On March 4, 1910, the Railway and certain shippers on its line, including the Brewery, filed a complaint against the trunk lines before the Commission (I. C. C. Docket No. 3151), in which it was alleged that the tariff cancellations were in effect an unjust and unlawful refusal by the trunk lines longer to continue through routes and joint rates theretofore established; that said action constituted an unlawful discrimination as between industries and shippers on the lines of the Railway and other industries and shippers in St. Louis, and subjected the traffic of the Railway to undue and unreasonable disadvantage, and gave undue and unreasonable preference to the shipping public in other parts of St. Louis; and further that the concerted action of the trunk lines was the result of an unlawful combination and conspiracy, in violation of the Sherman Anti-Trust Law. Complainants asked that through routes and joint rates be reestablished to and from points on the Railway from and to points on each of the trunk lines and points beyond, and that proper and reasonable divisions of the through or joint rates be established. There was also a prayer for reparation and for general relief.

The trunk lines answered, evidence was taken (none, however, being introduced by the trunk lines beyond such as was brought out by examination of complainants' witnesses), and, after a hearing, the Commission, under date June 21, 1911, filed a first report of its conclusions. 21 I. C. C. 304. It declared that the Railway was a

common carrier, within the provisions of the first section of the Commerce Act, and not a mere plant facility of the Brewery; that it supplied reasonable and necessary terminal facilities to many industries besides the Brewery; and that the payment to it by the trunk lines of a reasonable and just portion of the St. Louis rates for the terminal service rendered by it was not unlawful; that the action of the trunk lines in canceling the divisions and absorptions which for many years had been included in the St. Louis rates had subjected complainant shippers and a considerable portion of the public of South St. Louis to the payment of unjust and unreasonable transportation charges and to undue discrimination and disadvantage; that there had been in effect a failure on the part of the complainant carrier and defendants to agree to the apportionment or division of the rates or charges, and this situation under the statute imposed upon the Commission the duty of adjusting the matter; that in view of the peculiar features of the case detailed in the report (including the heavy shipments to and from the Brewery, and the fact that the same interests owned a majority of the stock of the Railway and of the Brewery), it was important that the allowances to the Railway and the services rendered by it to its patrons in consideration of such allowances should be equitably adjusted, and that the trunk lines should closely guard these features in making any allowances or divisions to the Railway, in order to avoid the charge of unjust discrimination or undue preference or advantage; but that the record before the Commission did not present a sufficient basis for a satisfactory determination of the question as to the reasonable and just division or allowance to the Railway, and the further question as to whether a part of the service performed by it was or was not plant facility service. These questions were reserved for further examination.

After the hearing, and before the making of this first

report, practically all of the carriers published and filed tariffs stating allowances or divisions with the Railway. These were suspended by the Commission pending its decision, and upon the making of the first report an order was entered canceling the suspensions, effective July 15, 1911. No other order was made at that time.

Thereafter a supplemental hearing was had upon which additional evidence was submitted by the trunk lines, and as a result the Commission filed its second report, dated June 21, 1913 (28 I. C. C. 93), but still made no order. In this report the Commission (p. 105) adhered to its former conclusion that the Railway was a common carrier subject to the act, but in other respects materially modified its views, now holding: that the payments formerly made out of their through rates by the trunk lines to the Railway were absorptions in compensation for services rendered to the trunk lines, and were not divisions of joint rates as for services rendered for the shippers served by the Railway, as they would be considered under joint rates prescribed by order of the Commission; that in the absence of any undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines, in delivering freight at the St. Louis rates to points on the rails of the Terminal and in refusing to bear the expense of similar delivery by the Railway upon its rails, were not subjecting the shippers located on and served by the Railway to undue prejudice and disadvantage; that therefore the only lawful order the Commission could make was in the establishment of joint rates, under which that part of the service performed by the Railway would be in the contemplation of the Commerce Act a service performed for the shipper, to be paid for by him, and not a service rendered for the trunk lines, the expense of which could be required by the Commission to be borne by them; that the trunk line rates to

St. Louis not being shown to be unreasonable in themselves, the joint rates with the Railway necessarily must be in excess of these by the amount of the Railway's part of the through charge, and that joint through rates should be established on that basis. Taking up the question of the amount to be added to the trunk line rates in making the joint rates, the existing allowances being, as stated, from $3.00 to $5.50 per car, and complainants asking for a uniform allowance of $4.50 per car, said to be lower on the average, the Commission called attention to the fact that the Railway's rate for local shipments between any points on its line was $2 per car, fixed as a maximum by city ordinance; for intra-plant movements, availed of only by the Brewery—that being the only industry having need for such service—$1 per car; and for weighing movements 25 cents per car; and that the Railway had a contract with the Cotton Belt under which it handled shipments for the latter, under certain exemptions from liability for damage, for $1 per car, and had offered the same contract to other carriers. Considering these facts with the other testimony submitted on this phase of the case, the Commission expressed the opinion that the division of the joint rates accruing to the Railway should not exceed $2 per car, saying: "However, we shall not by definite finding and order fix these divisions now. This is our original finding with respect to the establishment of joint rates, and the carriers, in accordance with the provisions of the act, will be given an opportunity to agree among themselves." In conclusion the Commission announced: "We regard the present allowances which, as stated, average slightly above $4.50 per car, as effecting unlawful results."

Following the partial decision of the Commission in its first report, most of the trunk lines reinstated the allowances to the Railway, and those allowances, averaging about $4.50 per car, were being paid at the time of

the making of the second report. Pursuant to that report, they were canceled.

In this situation the Railway, the Brewery, and other complainant shippers applied to the Commission for a rehearing, and the case was reargued and taken under advisement November 13, 1913. Pending its decision, and on December 7, 1913, the Cotton Belt and another trunk line, both defendants in I. C. C. Docket No. 3151, published and filed with the Commission tariffs to become effective January 7, 1914, providing for absorption of the switching charges of the Railway up to $4.50 per car. These absorptions were suspended by order of the Commission December 19, 1913, until May 7, 1914, and by an order dated April 20, 1914, were suspended for a further period of six months, or until November 7, 1914. The suspension case was designated as Investigation and Suspension Docket No. 355, and was treated by the Commission as ancillary to the principal case, I. C. C. Docket No. 3151.

Under date July 10, 1914, and prior to the expiration of the second period of suspension, the Commission filed its third and final report, 32 I. C. C. 100. It affirmed the findings and conclusions contained in the second report, with an "interpretation"; still dealt with the Railway as a common carrier; held that the trunk lines by their action in canceling the allowances to the Railway while continuing to absorb the charge of the Terminal, whose stock they owned, did not subject the Railway or its shippers to undue prejudice or disadvantage; that the amounts formerly paid by the trunk lines to the Railway were voluntary allowances and could not be considered by the Commission to be divisions of joint rates which it could by affirmative order establish; that the separate rates of the trunk lines and of the Railway being necessarily regarded upon the record before the Commission as *prima facie* reasonable, any joint rates which

the Commission could by affirmative order require the carriers in the through route to establish would necessarily be higher than the trunk line rates to and from St. Louis by the amount of that part of the through charge which would accrue to the Railway; that while the Commission could not require the trunk lines to participate with the Railway in joint rates no higher than their rates to St. Louis, they might voluntarily participate on that basis, provided that in the division they did not pay to the Railway for its service more than was just and reasonable, and did not thereby in the amount of the excess indirectly refund to the Brewery a part of the through transportation charges paid to them by the Brewery; that the former allowances of $4.50 per car paid by the trunk lines to the Railway were excessive; and, instead of a maximum division to the Railway of $2 per car, as suggested in the second report, upon further consideration the view was expressed that the division accruing to the Railway should not exceed $2.50 per car, subject to modification upon further hearings with respect to divisions if the necessity should arise.

In announcing its purpose to make an order requiring the establishment and maintenance by complainant Railway and defendant trunk lines of maximum joint rates not exceeding the St. Louis rates of the trunk lines by more than $2.50 per car, the Commission declared that when this had been done, whether the carriers in the through routes should establish rates on that maximum basis, or by voluntary agreement on a basis not higher than the St. Louis rates, then, upon failure of the trunk lines and the Railway to agree upon the proper basis of division, and upon request made to the Commission for the purpose, it would fix the divisions upon further investigation as provided in the act; if that inquiry should confirm its present impression that $2.50 per car was a reasonable division to the Railway, that would be granted;

and if, on the other hand, the Commission should be convinced by the evidence that $2.50 per car was too much or not enough, it would fix the amount accordingly; and that if not asked by the carriers to fix the divisions, the Commission, upon proper cause appearing, might in its discretion institute an inquiry upon its own motion, under those provisions of the act which forbid the giving or receiving of rebates or undue concessions, directly or indirectly, by any device whatsoever, having in mind particularly the fact of the common ownership of Railway and Brewery stock.

Thereupon an order was made under I. C. C. Docket No. 3151, dated July 10, 1914, requiring the trunk lines and the Railway on or before January 1, 1915, to cease and desist from charging their then present rates on traffic between points on the line of the Railway and points on the trunk lines in other States to the extent that those rates exceeded contemporaneous St. Louis rates by more than $2.50 per car, and to put in force on or before the same date and maintain thereafter for a period of not less than two years rates applicable to traffic on the Railway not exceeding rates contemporaneously in effect between St. Louis and points in other States by more than $2.50 per car.

At the same time, and upon the basis of the same report, an order was made under I. & S. Docket No. 355, canceling the Cotton Belt tariff that had been suspended by the orders of December 19, 1913, and April 20, 1914.

The former order of July 10 was attacked in a suit brought in the District Court by the Railway, in which the Brewery and other shippers on the line of the Railway intervened as co-petitioners. Answers were filed by the United States and the Interstate Commerce Commission, evidence was taken, and upon final hearing the suit was dismissed, without opinion. No. 25 is an appeal from

this decree. The orders of April 20 and July 10 under I. & S. Docket No. 355 were the subject of attack in a suit by the Railway and the Cotton Belt, in which answers were filed by the United States and by the Interstate Commerce Commission, and upon evidence taken the court, without opinion, dismissed the petition. From this decree the appeal in No. 24 was taken.

Mr. Sidney F. Andrews and *Mr. Daniel N. Kirby*, with whom *Mr. Charles Nagel* was on the briefs, for appellants:

The reasonableness *per se* of the advanced rates, made effective by the cancellation of the tariffs, was in issue and was actually passed upon by the Commission. The cancellation of the absorptions constituted an "increase" of the former rates. 30 I. C. C. 501, 503; *id.* 388, 389. See also 30 I. C. C. 16; *id.* 349; *id.* 538, 545; *id.* 696, 699; 31 I. C. C. 633, 635; 29 I. C. C. 653; *id.* 70, 78. And the burden rested on the trunk line carriers to justify the increase. Commerce Act, § 15; 30 I. C. C. 415, 419; *id.* 581, 583; 31 I. C. C. 351, 355; *id.* 573, 582; 30 I. C. C. 505, 508.

In the absence of proof to the contrary a presumption arose from the long continuance of the former rates that they were *per se* reasonable. *Interstate Commerce Commission* v. *Chicago, Burlington & Quincy R. R. Co.*, 186 U. S. 320, 336; 26 I. C. C. 402, 404; *id.* 422, 429; 31 I. C. C. 244, 253; 34 I. C. C. 234, 247; 35 I. C. C. 47, 68. The reasonableness of the advanced rates was assumed by the Commission without evidence.

The carrier may increase a rate or it may curtail the service performed for it, but if such action is challenged it must bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination. 34 I. C. C. 242. In its second report the Commission held that while the trunk lines might voluntarily extend their

service to points on the Manufacturers Railway at the St. Louis rates, they could not be compelled to do so; the reason being that their rates to the ends of their own rails were reasonable *per se*, and that therefore for any service beyond they would be entitled to additional compensation. Hence the assumption of the reasonableness of their rates to the end of their rails formed the foundation of the conclusion. For more than twenty years, the former rates of the trunk lines had included such service beyond their own rails (first report, 21 I. C. C. 313), and under their new tariffs the carriers were performing a less service for the same compensation, which was equivalent to an advance in their rates. A proper determination, therefore, of the issue of the reasonableness *per se* of the advanced rates was all-controlling. Such finding having been made without evidence, the order based thereon was void and should have been set aside. *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91; *Florida East Coast Ry. Co.* v. *United States*, 234 U. S. 167.

The advanced rates were presumptively unreasonable because established not by free competition but by joint and concerted action of the trunk lines, pursuant to their conspiracy to further the unlawful monopoly known as the Terminal Railroad Association of St. Louis. Appellants did not and do not seek to have the Association, either directly or through its proprietary lines, declared a monopoly, or enjoined or punished in any way as a monopoly. They did and do contend that the Sherman Act is pertinent and necessary to be taken into consideration, because it is a part of the law of the land. While it does not confer special jurisdiction on the Commission, or the Commerce or District Courts in reviewing orders of the Commission, it does enter into the duties and powers of the Commission as a limitation upon and qualification of them, and it enters also into the duties of

carriers toward each other and toward the shipping public, as a limitation and qualification upon them. When an increase in rates results from free competition, it is entitled (in the absence of statute providing otherwise) to the presumption of reasonableness; on the other hand, when a change in rates is shown to have resulted from unlawful concert of action, prompted by motives which preclude a consideration of the reasonable merits of such action, then no presumption of reasonableness can attach, and, in such a case, the circumstances showing motive and unreasonableness become a pertinent and important subject of inquiry, as tending to show unreasonableness. 21 I. C. C. 316; 10 I. C. C. 505, 540; 12 I. C. C. 236, 241. The facts showing unlawful conspiracy violative of the Sherman Act are proper to be considered as compelling the conclusion that the cancellation tariffs, the increase of rates resulting therefrom, and the attitude of the trunk lines throughout toward the Railway and its shippers are presumptively unreasonable, unjust, and intended to be discriminatory.

In the absence of proof sustaining the reasonableness *per se* of the advanced rates, and in view of the presumption of the reasonableness *per se* of the former rates, and of the further presumption that the increased rates were unreasonable, the only valid order which the Commission could have made was a mandatory one commanding the carriers to restore their former rates. It was this for which complainants contended. 28 I. C. C. 110. Under similar circumstances such a course has been frequently followed by the Commission. 23 I. C. C. 518, 519. See 34 I. C. C. 234.

When the ultimate facts are admitted or not in dispute, the legal effect of those facts presents a question of law, and is reviewable as such.

The Commission based its conclusion that there was no undue discrimination entirely upon its further conclusion

(which was purely a conclusion of law, not involving any inference of fact), that the terminal service performed by the lines of the Terminal and of its operating subsidiaries and of the terminal facilities of the Iron Mountain, and of the five other trunk lines, which perform terminal switching in St. Louis in connection with other line carriers, must as a matter of law be treated as part of the line haul of the trunk lines, and not as distinct terminal services performed by independent terminal carriers competing with the Railway; and this notwithstanding the fact that, while refusing to continue to absorb the terminal charges of the Railway, the trunk lines were at the same time continuing to absorb the terminal charges of the Terminal and of the Transfer Railway, and of the various trunk lines which performed terminal services in St. Louis. By that interpretation of the law, the Commission permitted the trunk lines to deny the St. Louis rate to shippers on the Railway, while at the same time permitting it to all shipping competitors within the same switching zone (the City of St. Louis), and thus placed the Railway and its shippers at the disadvantage of having higher rates than any other shipping points in St. Louis, and put them at the mercy of the trunk lines owning the Terminal, by holding that while the trunk lines might by voluntary act as a matter of grace absorb (or refuse to absorb) the charges of the Railway, the Commission could not compel them to do so.

It is a necessary conclusion from the decision of this court in the *Terminal Case*, that if the Terminal be held an integral part of the trunk lines and its service a part of their line haul, then the combination is unlawful and would be dissolved; if, on the other hand, it is an independent institution, "solely engaged in operating terminal facilities," performing a distinct terminal service (not a part of the line haul), then it is lawful, but in the latter case it must be treated as an independently

operating terminal carrier, for all purposes of competition.

The trunk lines (before this court) justified the Terminal's continued existence on the ground that it is an independent terminal carrier, but on the other hand, in their treatment of the Railway, they discriminated in favor of the Terminal and in favor of its shippers and in favor of each other and against this competitor, on the ground that the Terminal is legally an integral part of the trunk lines, and its service a part of the line haul, and they thereby contravened the decision of this court in the *Terminal Case.*

Yet that is precisely what the Commission held they might do, since its decision of "no discrimination" was based squarely upon its holding that the Terminal was not an independent terminal system.

Nor can the conclusion of the Commission on the status of the Terminal be sustained on the ground that the trunk lines own all of its shares of stock. *Interstate Commerce Commission* v. *Stickney*, 215 U. S. 98, 108; *United States* v. *Union Stock Yards Co.*, 226 U. S. 286.

The Commission erred in concluding that the terminal facilities of each of the six trunk lines which perform terminal switching in St. Louis should be treated as merely extensions of the rails of all the other trunk lines; and that the terminal switching performed by each in connection with the line haul performed by another trunk line should be treated as a part of the line haul of the latter.

The Commission also erred as a matter of law in holding that the existence of "reciprocal switching" relations between the trunk lines made their St. Louis terminals mere extensions of the rails of all the trunk lines, and made the terminal service performed by them a part of the line haul. *Pennsylvania Co.* v. *United States*, 236 U. S. 351; *Louisville & Nashville R. R. Co.* v. *United States*, 238 U. S.

1, 16, 17; *Louisville & Nashville R. R. Co.* v. *United States*, 227 Fed. Rep. 258, 269.

The decision of the Commission on the question of discrimination is directly contrary to its decisions in analogous cases. 34 I. C. C. 234, 237; 28 I. C. C. 101; 29 I. C. C. 212; 34 I. C. C. 596, 601; 37 I. C. C. 497; 36 I. C. C. 146.

The Commission erred in the view that there is a legal distinction between "divisions of joint rates," and "absorptions of switching charges;" that it lacked power to prescribe "absorptions;" and that therefore the restoration of the Railway's canceled absorptions must be left to the volition of the trunk lines. 28 I. C. C. 103. The Commission had this authority under its powers to establish maximum joint rates and to prescribe divisions. Commerce Act, §§ 1, 3, 15. Discrimination by carriers against connecting lines is forbidden by § 3. The "use of tracks" in § 3 does not mean an extension of service through divisions or allowances. *Pennsylvania Co.* v. *United States*, 214 Fed. Rep. 445, 447; 236 U. S. 351.

Divisions and allowances are identical in substance, each being an agreed participation in the revenue arising out of a through and joint rate. *Fourche River Lumber Co.* v. *Bryant Co.*, 230 U. S. 316, 322, 323. The distinction that allowances relate to services rendered for a trunk line and divisions to services rendered a shipper is erroneous. In each case the service is for a tariff charge, paid out of a through joint rate at a figure agreed to by all participating carriers, and the service of each participating carrier is rendered for the shipper.

The Commission erred in holding that under no circumstances is a carrier entitled to reparation, and in ignoring the prayer of the complaining shippers for reparation. Commerce Act, §§ 3, 8, 9, 13. Although the order is silent concerning the reparation prayed for, and is thus negative in form, its denial of a lawful right is

affirmative in effect. *United States* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 234 U. S. 476.

The order of the Commission suspending the tariff of the Cotton Belt for a period of six months is arbitrary and made without lawful authority and in effect a denial of due process of law. Commerce Act, § 15; *American Sugar Refg. Co.* v. *Delaware, Lackawanna & Western R. R. Co.*, 207 Fed. Rep. 733; *Akerly* v. *Vilas*, 24 Wisconsin, 171; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 93.

The order is confiscatory.

Mr. D. Upthegrove, *Mr. A. L. Burford* and *Mr. Edward A. Haid* filed a brief for St. Louis Southwestern Ry. Co. in No. 24.

Mr. Blackburn Esterline, Special Assistant to the Attorney General, with whom *The Solicitor General* was on the brief, for the United States.

Mr. Joseph W. Folk for the Interstate Commerce Commission.

MR. JUSTICE PITNEY, having made the foregoing statement, delivered the opinion of the court.

It will be convenient to dispose first of No. 25.

The scope of the order of July 10, 1914, under I. C. C. Docket No. 3151, is simple and limited; the grounds of attack upon it are many and diverse, and based rather upon what it does not, than upon what it does, require to be done. As is pointed out in the prefatory statement, the complaint before the Commission was made by the Railway, the Brewery, and certain other shippers served by the Railway. The respondents were the trunk lines. The complaint charged that the then recent tariff can-

cellations were in effect a refusal to continue through routes and joint rates from and to points on the line of the Railway; alleged that this constituted unreasonable discrimination between shippers on the line of the Railway and other shippers in the City of St. Louis, and subjected the former to undue prejudice and disadvantage, contrary to § 3 of the Commerce Act (24 Stat. 379, 380, c. 104); and prayed that the trunk lines be required to reëstablish the through routes and joint rates as they existed before the cancellations, that the reasonable divisions of the rates be determined, and that due reparation be awarded to the complainants, with such other relief as the Commission might deem necessary. The order under consideration, recognizing through routes as being already in effect (a fact about which there is no dispute), required the Railway and the trunk lines to establish, and for at least two years to maintain, rates not exceeding by more than $2.50 per car the trunk line rates contemporaneously in effect between St. Louis and points in other States.

It is urged that the cancellation of the absorption tariffs on March 1, 1910, constituted an increase of the former rates because it curtailed the service to be rendered under those rates; that the former absorptions presumably resulted in reasonable rates (*Interstate Commerce Commission* v. *Chicago, Burlington & Quincy R. R. Co.*, 186 U. S. 320, 336); that by the "increased rate clause" of § 15 of the Commerce Act as amended in 1910 (36 Stat. 552, c. 309),[1] the burden was upon the trunk lines to show

[1] "At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this act [June 18, 1910], the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

the reasonableness of the new rates; and that, there being no evidence to sustain their reasonableness *per se*, the Commission erred in law in failing to set them aside by restoring the former absorptions.

But this clause of § 15, by the fair import of its terms, imposes upon the carrier the burden of proving the new rate to be just and reasonable, only where that question is involved in the hearing; it does not call for proof as to matters not in controversy. As the Commission pointed out in its several reports (21 I. C. C. 308; 28 I. C. C. 100–101, 103, 105, 110; 32 I. C. C. 102, 105), the complaint was not directed to the reasonableness of the separate rates either of the Railway (one of the complainants) or of the trunk lines. The effort was to require the re-establishment of the former absorptions on the ground that without them the continued practice of absorbing the charges of the Terminal constituted a discrimination as against shippers on the line of the Railway. And when the question of discrimination was finally decided against the contention of the complainants, and the claim of the Railway to be regarded as a common carrier was decided in their favor (both conclusions being supported by adequate evidence), it appearing that through routes actually were in effect after as before the cancellations, the Commission deemed it unnecessary to do more at that time than to fix a maximum for the joint rates, and then await the voluntary action of the Railway and the trunk lines about establishing joint rates within the maximum, and agreeing between themselves respecting divisions.

The question of the reasonableness of the allowances or divisions made and to be made to the Railway came into the case incidentally, but inevitably, because of the heavy shipments to and from the Brewery and the community of interest between it and the Railway. Upon this point there was abundant evidence to support the conclusion of the Commission that in making up the

joint rates not more than $2.50 per car should be added to the trunk line rates to St. Louis, and the intimation (not final, and not carried into the order) that any division to the Railway out of the joint rate in excess of $2.50 per car would amount to an undue preference or indirect rebate to the Brewery. Beyond this, no question of separate rates was involved, and the Commission did not err, in view of the issues, in assuming the trunk line rates to be reasonable *per se*. Although it might have dealt with the divisions in the same order, so far as necessary to prevent undue favoring of the Brewery (*O'Keefe* v. *United States*, 240 U. S. 294, 300–302), it was within the discretion of the Commission to allow the carriers to make their own agreement upon the subject, as contemplated by the first paragraph of § 15 of the act (36 Stat. 551), subject to its review.

It is insisted that the "advanced rates" resulting from canceling the absorptions were presumptively unreasonable because not established by free competition but by concerted action in furtherance of the aims of the Terminal Railroad Association of St. Louis, held by this court to be an unlawful combination in restraint of interstate commerce. *United States* v. *St. Louis Terminal*, 224 U. S. 383. But our decision in that case (224 U. S. 412; 236 U. S. 207–9) left untouched the powers of the Interstate Commerce Commission. Besides, appellants sought no special relief because of the Anti-Trust Act. Hence at the utmost they were only entitled to have the Commission consider the nature and objects of the Terminal Association as circumstances bearing upon the question of discrimination and other questions to which they were pertinent; and this the Commission did. 21 I. C. C. 308, 314; 28 I. C. C. 98, 104–106, 109–110; 32 I. C. C. 102.

It is insisted, however, that the finding to the effect that it was not an undue or unjust discrimination for the trunk lines to refuse to absorb the Railway's charges and

thereby extend their flat St. Louis rates to the territory served by the Railway, while doing so with respect to the territory served by the Terminal, is contrary to the indisputable character of the testimony and inconsistent in law with the very facts found by the Commission. To this we cannot accede. It is not any and every discrimination, preference, and prejudice that are denounced by the Commerce Act. Section 3 (Act of February 4, 1887, c. 104, 24 Stat. 379, 380) renders unlawful any "*undue or unreasonable*" preference or advantage, prejudice or disadvantage. In the same section the requirement of "all reasonable, proper, and equal facilities for the interchange of traffic" is qualified so as not to require one carrier to give the use of its tracks or terminal facilities to another. And in the first paragraph of amended § 15 (36 Stat. 551) it is rates, regulations, or practices that in the opinion of the Commission are "*unjustly* discriminatory, or *unduly* preferential or prejudicial," etc., to which the prohibition is to be applied.

Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission (*Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 170), and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. This results from the provisions of §§ 15 and 16 of the Commerce Act as amended in 1906 and 1910 (34 Stat. 589–591, c. 3591; 36 Stat. 551–554, c. 309), expounded in familiar decisions. *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, 215 U. S. 452, 469–470; *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547; *Procter &*

Gamble Co. v. *United States*, 225 U. S. 282, 297–298; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91.

In the present case the negative finding of the Commission upon the question of undue discrimination was based upon a consideration of the different conditions of location, ownership, and operation as between the Railway and the Terminal. 28 I. C. C. 104, 105; 32 I. C. C. 102. The conclusions were reached after full hearing, are not without support in the evidence, and we are unable to say that they show an abuse of discretion. It may be conceded that the evidence would have warranted a different finding; indeed the first report of the Commission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this can not be done. *United States* v. *Louisville & Nashville R. R. Co.*, 235 U. S. 314, 320; *Pennsylvania Co.* v. *United States*, 236 U. S. 351, 361. The common use of the St. Louis Terminal by the fourteen trunk lines under a single arrangement as to absorption of the terminal charges does not, as matter of law, entitle the Railway, which has no trunk line and does terminal switching alone, to precisely the same treatment. *United States* v. *St. Louis Terminal*, 224 U. S. 383, 405, 406; *Louisville & Nashville R. R. Co.* v. *United States*, 242 U. S. 60.

Criticism is directed to the somewhat abstruse distinction drawn by the Commission between allowances or absorptions made by trunk lines in compensation for services rendered to them and divisions out of joint rates as for services rendered for the shippers (28 I. C. C. 101–106; 32 I. C. C. 102); but we deem it unnecessary to discuss the point. See *Tap Line Cases*, 234 U. S. 1, 28; *United States* v. *Butler County R. R. Co.*, 234 U. S. 29, 35–36; *O'Keefe* v. *United States*, 240 U. S. 294, 302.

It hardly can have escaped attention that the real com-

plaint of appellants respecting the order now under consideration is directed not to what the order requires to be done, but to what it does not require. It granted a part of the relief for which appellants had applied to the Commission. Recognizing the Railway as a common carrier to which allowances and divisions might be accorded by the trunk lines, and that through routes were in operation between the Railway and those lines, it fixed the maximum joint rates, and went no further for the present. The real ground for resorting to the courts in this case is the failure to fix divisions. In effect the District Court was asked to perform a function specifically conferred by law upon the Commission. But that court has only the same jurisdiction that formerly was vested in the Commerce Court (Act of June 18, 1910, c. 309, 36 Stat. 539; Act of October 22, 1913, c. 32, 38 Stat. 208, 219); and it is settled that this does not permit the court to exercise administrative authority where the Commission has failed or refused to exercise it, or to annul orders of the Commission not amounting to an affirmative exercise of its powers. *Procter & Gamble Co.* v. *United States*, 225 U. S. 282, 292, *et seq.*

Complaint is made because reparation was not awarded. But we are unable to see that proper foundation was laid for this in the evidence submitted to the Commission.

Nothing more need be said concerning No. 25.

The first question raised in No. 24 is based upon the language of the second paragraph of § 15 of the Commerce Act, inserted by the amendment of June 18, 1910, c. 309, 36 Stat. 539, 552.[1] It is said that the tariff published by

[1] "Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so or-

the Cotton Belt December 7, 1913, was a new tariff within the meaning of this provision, and while the Commission was authorized, either upon complaint or on its own initiative, to suspend its operation pending a hearing, this suspension must not be for a longer period than 120 days beyond the time when the tariff would otherwise go into effect unless the hearing could not be concluded within that period, in which case alone the Commission might extend the time of suspension for a further period not exceeding six months. It is contended that no hearing on the matters involved in the suspended tariff was begun within the 120 days, and therefore the second order of suspension, and also the order canceling this tariff, were arbitrary and unlawful; the argument being that the issues involved in I. C. C. Docket No. 3151 were not the same as those presented in the matter of the suspended tariff, I. & S. Docket No. 355, and hence there was no hearing whatever on the latter.

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ders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months."

The form of the orders made by the Commission in I. & S. Docket No. 355 lends color to this argument. The order of December 19, 1913, makes no reference to the proceedings then pending in I. C. C. Docket No. 3151, treats the tariff recently filed as "stating new individual regulations and practices affecting rates and charges," declares that the Commission will enter upon a hearing concerning their propriety, and directs that their operation be postponed until the 7th of May; while the order of April 20 refers to the former one, recites that "such hearing cannot be concluded within the period of suspension above stated," and orders a further suspension until the 7th of November.

But it is not suggested, and there is no ground for supposing, that the parties were misled by the form of these orders. They were parties to I. C. C. Docket No. 3151, then pending. The Cotton Belt was one of the carriers which had canceled the former tariffs authorizing allowances averaging $4.50 per car to the Railway, and the Railway having complained to the Commission of its action, it answered declaring among other things that it canceled the tariff for the reason that it was advised that the allowances theretofore made to the Railway were illegal because the Railway was merely an industrial or tap line and under the law not entitled to any part of the through rate, and further that if the Railway was entitled to compensation as a carrier it was not entitled to receive from the Cotton Belt any allowance out of the through rate, that if entitled to any it was not entitled to the allowance theretofore paid to it under the canceled tariff, and that the allowance given to the Railway was unreasonable, excessive, and unjust.

The issues raised by this answer and by the answers of the other defendant trunk lines, which are briefly recited in the first report (21 I. C. C. 307) but need not be here repeated, necessarily involved, and were treated by the

Commission as involving, the question how much could be allowed by the trunk lines to the Railway out of the through rate without amounting to an undue preference or indirect rebate to the Brewery because of the common control of the Brewery and the Railway. Special attention was called to this in the first report, as appears from what has been recited in the statement prefacing this opinion. And it is obvious that the same consideration was inherent in the case, whether the payments by the trunk lines to the Railway were considered as divisions of joint rates for services rendered for the shippers served by the Railway, or absorptions in compensation for services rendered by the Railway for the trunk lines. In either case, if the allowances to the Railway were made unduly large, the Brewery's share of the profit accruing from them would amount to an indirect preference to the Brewery. *Tap Line Cases*, 234 U. S. 1, 28; *O'Keefe* v. *United States*, 240 U. S. 294, 301–302. Accordingly, in the second report (28 I. C. C. 107), the Commission said: "Complainant railway itself concedes that this question of the amount of the allowance to the railway, but not the question of whether a reasonable allowance should be made, is a matter for closer investigation owing to the common ownership of the stock of the railway and of the brewery, its statement in this respect, however, being based of course upon the understanding that the allowance was to come from the trunk lines." And in the concluding part of its report, the Commission stated (p. 111): "Should one or more of the trunk lines attempt to pay to the railway [more than] the $2 per car which we suggest herein as being in our opinion reasonable for the latter's shippers to pay for its service, another question would be presented in which would figure the fact, much discussed in the record, of the common ownership of the stock of the railway and of the brewery. That question would not arise primarily under section 15 of the act, but under those sections

which seek to prohibit the giving of unlawful concessions by any device whatsoever. It follows from what we have said herein that we regard the present allowances which, as stated, average slightly above $4.50 per car, as effecting unlawful results." This was on June 21, 1913; pursuant to the report the criticised allowances were canceled; and on November 13 in the same year the case was submitted to the Commission upon a rehearing at the instance of the Railway. The Cotton Belt remained a party to the proceeding. The issues raised by its answer had not been finally disposed of, nor its answer withdrawn. Since it involved the public interests, and not merely those of the Cotton Belt, this particular issue hardly could be withdrawn.

The question of the validity of the previous allowances, approximately $4.50 per car, or of any allowance greater than $2.00 per car, being thus bound up in the pending controversy under I. C. C. Docket No. 3151, the Cotton Belt tariff published December 7, 1913, while the Commission had that controversy under advisement, manifestly was an attempt to forestall the decision. There was no error in suspending it pending the decision. And, there being nothing further to be submitted to the Commission in the way of evidence or argument, it was natural, and not inconsistent with the substantial rights of the parties, for the Commission to treat the suspension of the Cotton Belt tariff as a proceeding ancillary to the other, involving no different question on the merits.

The final order setting this tariff aside necessarily rested upon a finding that the proposed absorption was so unduly large as to amount to a preference or indirect rebate to the Brewery. In orders of this kind, not including an award of damages, formal and precise findings no longer are necessary; § 14 having been amended in this respect by Act of June 29, 1906, c. 3591, 34 Stat. 584, 589. See House Report No. 591, 59th Cong., 1st sess., p. 4, explaining this provision of the bill.

What we have said disposes at the same time of the only objection raised against the order of April 20, 1914.

The Railway makes the additional contention that the order of July 10, 1914 (I. & S. Docket No. 355), prohibited the Cotton Belt from paying to the Railway as much as $4.50 per car for its services, and that it amounted to a taking of the Railway's property without due process of law in violation of the Fifth Amendment, because any rate less than that named would be confiscatory. That the order has the effect of prohibiting the Cotton Belt from paying to the Railway as much as $4.50 per car is alleged in the petition of the appellants and admitted in the answer of the United States, and we take it for granted that this is so. It is argued that it was operative upon all the trunk lines, and it is contended that payments by all of these lines upon all interstate car interchanges of any rate less than $4.50 per car would not yield in the aggregate a reasonable return upon the fair value of the Railway's property devoted to the use of interstate commerce.

As a part of the argument, it is urged that the decision of the Commission actually limits the earnings of the Railway to $2.50 per car, alleged to be wholly inadequate. But the order under attack in this suit has no such effect; and the contemporaneous order under I. C. C. Docket No. 3151 merely limits the joint rates to not exceeding $2.50 in advance of the St. Louis rates, and does not deal with the divisions; the opinion expressed upon this point being only tentative.

Appellees contend that the finding of the Commission upon the subject of confiscation is conclusive; or at least that it is not subject to be attacked upon evidence not presented to the Commission, as is attempted here. We cannot sustain this objection in its entirety. It is true that so long as the Commission proceeds in accordance with the requirements of the Commerce Act and its amendments, and with proper regard for constitutional restrictions, its

administrative orders, not calling for the payment of money, if made after due hearing and supported by evidence, are not subject to attack in the courts. This, as we have seen, results from the provisions of §§ 15 and 16 of the act as amended. *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, 215 U. S. 452, 469–470; *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547; *Procter & Gamble Co.* v. *United States*, 225 U. S. 282, 297–298; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91. But these cases recognize that matters of constitutional right are not to be conclusively determined by the Commission; and we are not prepared to say that a party is debarred from attacking an order of the Commission upon constitutional grounds even though they were not taken in the hearing before that body.

Nevertheless, correct practice requires that, in ordinary cases, and where the opportunity is open, all the pertinent evidence shall be submitted in the first instance to the Commission, and that a suit to set aside or annul its order shall be resorted to only where the Commission acts in disregard of the rights of the parties. This was recognized before the amendment of 1906, and when by §§ 14, 15, and 16 of the original Act of February 4, 1887, c. 104, 24 Stat. 379, 384, as amended by Act of March 2, 1889, c. 382, 25 Stat. 855, the findings made by the Commission upon questions of fact were limited in their effect to that of *prima facie* evidence in all cases and not only, as now, in reparation cases. *Cincinnati, New Orleans & Texas Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, 196; *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 235, 238; *Louisville & Nashville R. R. Co.* v. *Behlmer*, 175 U. S. 648, 675; *East Tennessee &c. Ry. Co.* v. *Interstate Commerce Commission*, 181 U. S. 1, 27; *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454. The 1906

amendment, in modifying § 14 so as to dispense with the necessity of formal findings of fact except in cases where damages (or reparation) are awarded, and §§ 15 and 16 so as to give a greater effect than before to the orders of the Commission other than those requiring the payment of money, renders it not less but more appropriate that, so far as practicable, all pertinent objections to action proposed by the Commission and the evidence to sustain them shall first be submitted to that body. Hence, we cannot approve of the course that was pursued in this case, of withholding from the Commission essential portions of the evidence that is alleged to show the rate in question to be confiscatory. Certainly, where the Commission, after full hearing, has set aside a given rate on the ground that it is unreasonably high, it should require a clear case to justify a court, upon evidence newly adduced but not in a proper sense newly discovered, in annulling the action of the Commission upon the ground that the same rate is so unreasonably low as to deprive the carrier of its constitutional right of compensation.

However, the issue is in the case and must be dealt with. In order to show that any rate less than $4.50 would be non-compensatory, the Railway undertook to demonstrate that the full $4.50 would not pay the cost of transportation and yield a just return upon the value of its property. Yet the rates voluntarily established by the Railway prior to the commencement of the present controversy averaged about $4.50 per car, a $4.50 rate was provided for in a tariff issued by the Railway in February, 1913, a uniform allowance of this amount was asked for by it upon the second hearing before the Commission, and the Railway concurred in, and now seeks to maintain, the Cotton Belt tariff which contemplated payment of that rate for its services. Besides, the rate may be compared with $3 per car charged by the Terminal for similar services, $2 per car fixed by city ordi-

nance as the Railway's maximum charge for local shipments between any points on its line, the charge of $1 per car voluntarily established by the Railway for intra-plant movements, 25 cents per car for weighing movements, and the special charge of $1 per car on limited liability, obtaining between the Railway and the Cotton Belt and offered to other carriers. The evidential effect of the Railway's voluntary action is obvious. *Interstate Commerce Commission* v. *Chicago, Burlington & Quincy R. R. Co.*, 186 U. S. 320, 336.

Moreover, upon the second hearing before the Commission (January, 1912), Mr. Moore, the President of the Railway, testifying in its behalf upon the very point and from a full knowledge of the operations of the company and its property and expense accounts, stated: "The revenue which we are now receiving for all kinds of service performed by the Manufacturers Railway Company is sufficient to pay operating expenses, taxes, rentals, and other fixed charges and 7 per cent. on the investment."

The evidence produced by the Railway before the District Court, while quite inconsistent with these concessions, is adduced as a mathematical demonstration that the $4.50 rate is confiscatory. The principal witnesses were an expert in the valuation of railways, two real estate experts, and Mr. Moore, the President of the Railway. Opinion evidence was relied upon, basing values on estimated cost of reproduction less depreciation, it being stated that the records of the Railway had been kept in such a way as not to show the actual cost. A table was presented ("Summary D") stating the entire value of the property of the Railway on January 1, 1915, at $2,215,353.78, and deductions were made of capital expenditures during the previous eighteen months, in order to show the value as of June 30, 1913, and June 30, 1914. It was attempted to assign to the interstate business a proportion of the total value corresponding to the extent

of its employment in that business. *Minnesota Rate Cases*, 230 U. S. 352, 461. The value of the property as of June 30, 1913, according to the estimates, was $2,086,474.98; and it being found that the interstate car movements during the preceding fiscal year were 79.58 per cent. of the total traffic, an application of this percentage to the total value gave $1,659,227.08 as the proportion of the value of the property, based on use, assigned to interstate traffic for the fiscal year 1913. Operating expenses, taxes, and rentals for the same year were said to amount to $195,628.80, of which 79.58 per cent., or $155,681.39, was apportioned to interstate business. The gross revenue from interstate business for the same year, on the assumed basis of $4.50 per car from all trunk lines on all car interchanges, was calculated to be $217,309.25. Deducting from this the apportioned expenses ($155,681.39) would leave a net revenue of $61,627.86, or only 3.7 per cent. of $1,659,227.08, the value of the property assigned on the basis of use to interstate traffic as of June 30, 1913.

Similar processes showed apparent net earnings of only 1.86 per cent. for the fiscal year ending June 30, 1914, and .77 per cent. for the six months ending December 31, 1914.

The calculations are complex, and we need not reproduce them in detail. We have indicated the outlines, and will analyze the figures only far enough to show that they do not amount to a demonstration.

By way of contrast to the results deduced from opinion evidence concerning values, it should be remarked that Mr. Moore testified in the District Court that at the commencement of his connection with the company in February, 1909, he could only find an apparent book value amounting to $300,899.65, which he believed, however, did not reflect the value of the railway property at that time; and that down to January 31, 1915, there had been improvements and additions to the equip-

ment amounting to $560,008.75, and additions to real estate amounting to $525,349, making a total book value of $1,386,257.40. By deducting $128,878.80 for capital expenditures subsequent to June 30, 1913, we get $1,257,378.60 as the total value on that date, of which 79.58 per cent., or $1,000,621.89, would represent the value assigned to the interstate business according to the formula; and upon this amount the calculated net revenue of $61,627.86 would yield over 6 per cent.

Returning to the calculation relied upon by the Railway, Summary D includes an item "Present Value of Leases, $757,102."

This is the sum of two items, explained as follows: The Railway holds under lease from the Brewery all the lands occupied by its tracks and certain tracks owned by the Brewery within what is described as the "Brewery Zone," bounded by Lynch Street on the north, First Street on the east, Utah Street on the south, and Thirteenth Street on the west, the rental being $24,000 per annum, and the lease having seventeen years to run from January 1, 1915. The real estate experts valued this according to its area in square feet, and by this process arrived at $1,377,853 as its market value. The rental value on a 5 per cent. basis would be $68,892.65. Since by the terms of the lease the lessor was required to pay the taxes, estimated at about $6,000, reducing the net income to about $18,000, this sum was deducted from $68,892.65, leaving $50,892.65 as the annual value of the lease to the Railway for the unexpired term of seventeen years; and the cash value of an annuity of that amount for that term, said to be $573,767, was taken as the capital value of the lease.[1] Again, the Railway

[1] The process is clearly erroneous. Payment of taxes by lessor is for its own account, not for lessee's. Annual cost of leasehold to lessee is measured by gross rental paid, irrespective of what lessor does with the money.

holds certain property in its River Yard under lease from the City of St. Louis at an annual rental of $4,000, expiring October 7, 1934. This property was estimated by the witnesses to be worth $376,309, 5 per cent. of which is $18,815.45, and this amount less $4,000 was taken to be the annual value of the lease, which, capitalized for 19 years, 9 months and 7 days, the unexpired term from January 1, 1915 (date of valuation), gave $183,335 as the value of this lease to the lessee.

We are not convinced that these somewhat speculative valuations of the leaseholds, even if the calculations were otherwise correct, ought to be included in the value of the Railway's property for the present purpose.

The lease from the Brewery includes sidings, tracks, and yards some of which are of special value to the Brewery, but either are inaccessible to the general public served by the tracks of the Railway or are practically monopolized for plant use by the Brewery. The Commission, in its Second Report, 28 I. C. C. 96, described the conditions.[1] The original lease from the Brewery to

[1] The squares bounded by the streets Ninth, Thirteenth, Lynch, and Dorcas; Ninth, Eleventh, Pestalozzi, and Arsenal; and Second, Broadway (Broadway being just south of Seventh), Pestalozzi, and Arsenal are devoted to buildings and yards of the brewery exclusively. Although within these bounded areas there are also others in addition to the three following-named departments, they will, for the sake of convenience, be referred to as the bottling department, Budweiser department, and keg department, respectively. The tracks serving all three of these departments are in and between buildings and sheds of the brewery or in the yards adjoining, and are practically inclosed—on some sides by buildings with passageways between and on the other sides by fences or walls surrounding the yards contiguous to the buildings All of the tracks within these yards are essential to the operation of the brewery except four team tracks in the yards contiguous to the bottling department at Ninth and Dorcas. As bearing upon the accessibility by the public to these various departments, it may be explained that the tracks in the open yard of the bottling department—that is, on the Ninth and Dorcas streets sides—are in-

the Railway, dated December 31, 1908, drew a distinction between tracks and sidings, leasing the former and excluding the latter, as to which, however, it contained this clause: "Said Association further gives and grants to said Railway the right and privilege to use and operate the aforesaid sidings, for railway purposes, upon condition, however, that such use will never interfere with the reasonable use thereof by said Association, of which said Association shall be the sole and only judge." This was made the subject of criticism at the first hearing before the Commission, and in consequence the lease was amended before the second hearing so as to omit this limitation (28 I. C. C. 97). But the evidence tends to show, if it does not render it clear, that certain yards and tracks representing more than one-third of the aggregate value of the leased lands are used almost if not quite exclusively by the Brewery; and raises a question whether some of the other yards, or portions of them, are not, like those mentioned, actually used rather as parts of the Brewery plant than as parts of the transportation system of the Railway.

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closed by an iron fence, on which are displayed "No Thoroughfare" signs, and that the four public team tracks in this yard, referred to, end on the edge of an embankment supported by a concrete wall built up from Ninth street, which is some 10 or 12 feet below, and topped with an iron fence; that the tracks at the Thirteenth street side of this department are ended some 10 or 15 feet below the street level by a stone wall and must therefore be reached by entries from other sides; that the team tracks in the Budweiser yard at Ninth and Pestalozzi are inclosed by a high iron fence with swinging gates; and, likewise, that the 25 or more ladder tracks in the yards of the keg department, beginning at Second and Pestalozzi and running west to Broadway, are ended some 25 feet below the level of Broadway by an embankment which is reënforced by a concrete or stone wall topped with an iron fence. As access to the latter department from the Broadway side is thus absolutely impracticable, entrance must be effected from Pestalozzi street or between buildings of the brewery on the Arsenal street side between Second and Broadway.

The finding of the Commission that the Railway is for the purposes of its decision a common carrier (a finding not now in question), does not have the necessary effect of impressing all of its property with the character of property employed in the service of the public. The Commission recognized that there was a question whether a part of the service performed by the Railway was not a plant-facility service rather than that of a common carrier. 21 I. C. C. 316. And under the peculiar circumstances of the case we prefer to accept the reserved rental of $24,000, voluntarily fixed by the parties most concerned at a time antedating the present controversy, as more reliable evidence of the annual value of the rights conferred upon the Railway as a carrier than the opinions of the experts based upon the theory that by the lease the entire value of the property was devoted to the public use.

The lease from the City to the Railway is not in the printed transcript, but the substance of the ordinance authorizing it is stated. It granted authority to construct, maintain, and operate tracks upon land of which a considerable part constituted a public wharf. If the stipulated rental is less than the fair annual value of the property it is to be presumed that the grant of the excess was to the public, not to the private interest of the Railway. We are at a loss to see upon what principle a presumed annual value of the leasehold in excess of the stipulated rent can be capitalized as assets of the Railway for the use of which in commerce the public is required to pay tolls. This would give to the lease the effect of converting public property, *pro tanto*, into private property.

Deducting the value of the leases, $757,102, from $2,086,474.98, the estimated value of the Railway's property as of June 30, 1913, would leave $1,329,372.98, of which 79.58 per cent., or $1,057,915.02, would represent the value assigned to the interstate business according to the for-

mula; and upon this amount the calculated net revenue of $61,627.86, would yield over 5.8 per cent.

The calculations of revenue and expenses also require revision. The gross revenue from interstate business as stated includes not merely that derived from car interchanges at $4.50 per car, of which in the fiscal year ending June 30, 1913, there were 45,602 cars, producing $205,209; but in addition there were short-haul interchanges, 4,975 cars at the city rate of $2 per car, producing $9,950; inter-plant and intra-plant movements, 1,206 cars at $1 per car, producing $1,206; and weighing movements, 3,777 cars at 25 cents, producing $944.25, making a total of $217,309.25. The evidence renders it clear that the cost of these different movements is not and cannot be segregated; and Mr. Moore himself testified in effect that it costs the same to the Railway to weigh a car upon which 25 cents revenue is received, as to make an intra-plant switch of a car for which $1 is received, or a city movement limited by ordinance to $2, or an interchange delivery for which $4.50 is the rate assumed for the purposes of the test. The plant movements are for the benefit of the Brewery alone, that being the only industry having need for such service; weighing movements likewise appear to be independent of transportation in commerce. The limit of $2 fixed by the ordinance for the city movements seems to have been a part of the consideration for the grant to the Railway of rights in the streets; and on this theory any deficiency of revenue is properly apportionable to the traffic participating in these movements. But as to the other movements, the method of calculation adopted apportions the cost between the different classes according to the revenue derived from each, rather than according to the cost or value of the service.

If the plant and weighing movements—all of the former and three-fourths of the latter being performed for the Brewery—were charged at (say) $2.50 per car instead of the

rates voluntarily adopted, the gain of revenue would be more than $10,000—approximately 1 per cent. upon the entire $1,057,915.02.

The evidence submitted upon the issue of confiscation suggests other questions that need not be discussed or even mentioned; but we must not be understood as accepting what we have not particularly criticized. It is sufficient to say there is a failure to prove that the rate is unremunerative.

Decrees affirmed.

Mr. JUSTICE HOLMES took no part in the consideration or decision of these cases.